

# Senate Study Bill 3238

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE  
DIVISION BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act to regulate viatical settlements, and providing for fees  
2 and penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5446XD 82  
5 da/rj/5

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1 1 Section 1. NEW SECTION. 508E.1A SHORT TITLE.  
1 2 This Act may be cited as the "Viatical Settlements Act".  
1 3 Sec. 2. Section 508E.2, Code 2007, is amended to read as  
1 4 follows:  
1 5 508E.2 DEFINITIONS.  
1 6 As used in this chapter, unless the context otherwise  
1 7 requires:  
1 8 1. "Advertising" means any written, electronic, or printed  
1 9 communication or any communication by means of recorded  
1 10 telephone messages or transmitted on radio; television; the  
1 11 internet; or similar communications media, including film  
1 12 strips, motion pictures, and videos, published, disseminated,  
1 13 circulated, or placed directly before the public in this  
1 14 state, for the purpose of creating an interest in or inducing  
1 15 a person to sell, assign, devise, bequest, or transfer the  
1 16 death benefit or ownership of a life insurance policy pursuant  
1 17 to a viatical settlement contract.  
1 18 2. "Business of viatical settlements" means an activity  
1 19 involved in but not limited to the offering, soliciting,  
1 20 negotiating, procuring, effectuating, purchasing, investing,  
1 21 financing, monitoring, tracking, underwriting, selling,  
1 22 transferring, assigning, pledging, hypothecating, or in any  
1 23 other manner acquiring an interest in a life insurance policy  
1 24 by means of a viatical settlement contract.  
1 25 ~~3.~~ 3. "Chronically ill" means any of the following:  
1 26 a. Being unable to perform or maintain at least two  
1 27 activities of daily living, including but not limited to  
1 28 eating, toileting, transferring, bathing, dressing, or  
1 29 continence.  
1 30 b. Requiring substantial supervision to protect the  
1 31 individual from threats to health and safety due to severe  
1 32 cognitive impairment.  
1 33 c. Having a level of disability similar to that described  
1 34 in paragraph "a" as determined by the United States secretary  
1 35 of health and human services.  
2 1 ~~2.~~ 4. "Commissioner" means the commissioner of insurance.  
2 2 5. a. "Financing entity" means an underwriter, placement  
2 3 agent, lender, purchaser of securities, purchaser of a policy  
2 4 or certificate from a viatical settlement provider, credit  
2 5 enhancer, or any entity that has a direct ownership in a  
2 6 policy or certificate that is the subject of a viatical  
2 7 settlement contract, but subject to all of the following:  
2 8 (1) Whose principal activity related to the transaction is  
2 9 providing funds to effect the viatical settlement or purchase  
2 10 of one or more viaticated policies.  
2 11 (2) Who has an agreement in writing with one or more  
2 12 licensed viatical settlement providers to finance the  
2 13 acquisition of viatical settlement contracts.  
2 14 b. "Financing entity" does not include a nonaccredited  
2 15 investor or a viatical settlement purchaser.  
2 16 6. "Fraudulent viatical settlement act" includes any of  
2 17 the following:  
2 18 a. An act or omission committed by any person who,

2 19 knowingly or with intent to defraud, for the purpose of  
2 20 depriving another of property or for pecuniary gain, commits  
2 21 or permits its employees or its agents to engage in acts  
2 22 including any of the following:

2 23 (1) Presenting, causing to be presented, or preparing with  
2 24 knowledge or belief that it will be presented to or by a  
2 25 viatical settlement provider, viatical settlement broker,  
2 26 viatical settlement purchaser, financing entity, insurer,  
2 27 insurance producer, or any other person, false material  
2 28 information, or concealing material information, as part of,  
2 29 in support of, or concerning a fact material to one or more of  
2 30 the following:

2 31 (a) An application for the issuance of a viatical  
2 32 settlement contract or insurance policy.

2 33 (b) The underwriting of a viatical settlement contract or  
2 34 insurance policy.

2 35 (c) A claim for payment or benefit pursuant to a viatical  
3 1 settlement contract or insurance policy.

3 2 (d) Premiums paid on an insurance policy.

3 3 (e) Payments and changes in ownership or beneficiary made  
3 4 in accordance with the terms of a viatical settlement contract  
3 5 or insurance policy.

3 6 (f) The reinstatement or conversion of an insurance  
3 7 policy.

3 8 (g) In the solicitation, offer, effectuation, or sale of a  
3 9 viatical settlement contract or insurance policy.

3 10 (h) The issuance of written evidence of viatical  
3 11 settlement contract or insurance policy.

3 12 (i) A financing transaction.

3 13 (2) Employing any plan, financial structure, device,  
3 14 scheme, or artifice to defraud related to viaticated policies.

3 15 b. In the furtherance of a fraud or to prevent the  
3 16 detection of a fraud to do, or permit an employee or agent to  
3 17 do, any of the following:

3 18 (1) Remove, conceal, alter, destroy, or sequester from the  
3 19 commissioner the assets or records of a licensee or other  
3 20 person engaged in the business of viatical settlements.

3 21 (2) Misrepresent or conceal the financial condition of a  
3 22 licensee, financing entity, insurer, or other person.

3 23 (3) Transact the business of viatical settlements in  
3 24 violation of laws requiring a license, certificate of  
3 25 authority, or other legal authority for the transaction of the  
3 26 business of viatical settlements.

3 27 (4) File with the commissioner or the equivalent chief  
3 28 insurance regulatory official of another jurisdiction a  
3 29 document containing false information or otherwise conceal  
3 30 information about a material fact from the commissioner.

3 31 c. Embezzlement, theft, misappropriation, or conversion of  
3 32 moneys, funds, premiums, credits, or other property of a  
3 33 viatical settlement provider, insurer, insured, viator,  
3 34 insurance policyowner, or any other person engaged in the  
3 35 business of viatical settlements or insurance.

4 1 d. Recklessly entering into, negotiating, brokering, or  
4 2 otherwise dealing in a viatical settlement contract, the  
4 3 subject of which is a life insurance policy that was obtained  
4 4 by presenting false information concerning any fact material  
4 5 to the policy or by concealing, for the purpose of misleading  
4 6 another, information concerning any fact material to the  
4 7 policy, where the person or the persons intended to defraud  
4 8 the policy's issuer, the viatical settlement provider, or the  
4 9 viator. As used in this paragraph, "recklessly" means  
4 10 engaging in the conduct in conscious and clearly unjustifiable  
4 11 disregard of a substantial likelihood of the existence of the  
4 12 relevant facts or risks, such disregard involving a gross  
4 13 deviation from acceptable standards of conduct.

4 14 e. Facilitating the change of state of ownership of a  
4 15 policy or certificate or the state of residency of a viator to  
4 16 a state or jurisdiction that does not have a law similar to  
4 17 this chapter for the express purposes of evading or avoiding  
4 18 the provisions of this chapter.

4 19 f. Attempting to commit, assisting, aiding or abetting in  
4 20 the commission of, or conspiracy to commit the acts or  
4 21 omissions specified in this subsection.

4 22 7. "Life insurance producer" means any person licensed in  
4 23 this state as a resident or nonresident insurance producer who  
4 24 has received qualification or authority for life insurance  
4 25 coverage or a life line of coverage pursuant to chapter 522B.

4 26 8. "Person" means a natural person or a legal entity,  
4 27 including, without limitation, an individual, partnership,  
4 28 limited liability company, association, trust, or corporation.

4 29 9. "Policy" means an individual or group policy, group

4 30 certificate, contract, or arrangement of life insurance owned  
4 31 by a resident of this state, regardless of whether delivered  
4 32 or issued for delivery in this state.

4 33 10. "Related provider trust" means a titling trust or  
4 34 other trust established by a licensed viatical settlement  
4 35 provider or a financing entity for the sole purpose of holding  
5 1 the ownership or beneficial interest in purchased policies in  
5 2 connection with a financing transaction. The trust shall have  
5 3 a written agreement with the licensed viatical settlement  
5 4 provider under which the licensed viatical settlement provider  
5 5 is responsible for ensuring compliance with all statutory and  
5 6 regulatory requirements and under which the trust agrees to  
5 7 make all records and files related to viatical settlement  
5 8 transactions available to the commissioner as if those records  
5 9 and files were maintained directly by the licensed viatical  
5 10 settlement provider.

5 11 11. "Special purpose entity" means a corporation,  
5 12 partnership, trust, limited liability company, or other  
5 13 similar entity formed solely to provide either directly or  
5 14 indirectly access to institutional capital markets for or in  
5 15 connection with any of the following:

5 16 a. For a financing entity or licensed viatical settlement  
5 17 provider.

5 18 b. (1) In connection with a transaction in which the  
5 19 securities in the special purposes entity are acquired by the  
5 20 viator or by qualified institutional buyers as defined in 17  
5 21 C.F.R. } 230.144 promulgated by the United States securities  
5 22 and exchange commission under the federal Securities Act of  
5 23 1933, as amended, 15 U.S.C. } 77a et seq.

5 24 (2) In connection with a transaction in which the  
5 25 securities pay a fixed rate of return commensurate with  
5 26 established asset-backed institutional capital markets.

5 27 3- 12. "Terminally ill" means having an illness or  
5 28 sickness that can reasonably be expected to result in death in  
5 29 twenty-four months or less.

5 30 13. "Viatical settlement broker" means a person, including  
5 31 a life insurance producer as provided for in section 508E.3,  
5 32 who working exclusively on behalf of a viator and for a fee,  
5 33 commission, or other valuable consideration, offers or  
5 34 attempts to negotiate viatical settlement contracts between a  
5 35 viator and one or more viatical settlement providers or one or  
6 1 more viatical settlement brokers. Notwithstanding the manner  
6 2 in which the viatical settlement broker is compensated, a  
6 3 viatical settlement broker is deemed to represent only the  
6 4 viator, and not the insurer or the viatical settlement  
6 5 provider, and owes a fiduciary duty to the viator to act  
6 6 according to the viator's instructions and in the best  
6 7 interest of the viator. "Viatical settlement broker" does not  
6 8 include an attorney, certified public accountant, or a  
6 9 financial planner accredited by a nationally recognized  
6 10 accreditation agency who is retained to represent the viator  
6 11 and whose compensation is not paid directly or indirectly by  
6 12 the viatical settlement provider or purchaser.

6 13 4- 14. a. "Viatical settlement contract" means a written  
6 14 agreement entered into between a viator and a viatical  
6 15 settlement provider and a person who owns or is insured under  
6 16 a life insurance or any affiliate of the viatical settlement  
6 17 provider establishing the terms under which compensation or  
6 18 anything of value is or will be paid, which compensation or  
6 19 value is less than the expected death benefits of the policy  
6 20 in return for the viator's present or future assignment,  
6 21 transfer, sale, devise, or bequest of the death benefit or  
6 22 ownership of any portion of the insurance policy or  
6 23 certificate, or who owns or is covered under a group life of  
6 24 insurance policy.

6 25 b. "Viatical settlement contract" includes a premium  
6 26 finance loan made for a life insurance policy by a lender to a  
6 27 viator on, before, or after the date of issuance of the policy  
6 28 where any of the following applies:

6 29 (1) The viator or the insured receives on the date of the  
6 30 premium finance loan a guarantee of a future viatical  
6 31 settlement value of the policy.

6 32 (2) The viator or the insured agrees on the date of the  
6 33 premium finance loan to sell the policy or any portion of its  
6 34 death benefit on any date following the issuance of the  
6 35 policy.

7 1 c. "Viatical settlement contract" does not mean a written  
7 2 agreement entered into between a viator and a person having an  
7 3 insurable interest in the viator's life. include any of the  
7 4 following:

7 5 (1) A policy loan or accelerated death benefit made by the

7 6 insurer pursuant to the policy's terms.  
7 7 (2) Loan proceeds that are used solely to pay any of the  
7 8 following:  
7 9 (a) Premiums for the policy.  
7 10 (b) The costs of the loan, including, without limitation,  
7 11 interest, arrangement fees, utilization fees and similar fees,  
7 12 closing costs, legal fees and expenses, trustee fees and  
7 13 expenses, and third-party collateral provider fees and  
7 14 expenses, including fees payable to letter of credit issuers.  
7 15 (3) A loan made by a bank or other licensed financial  
7 16 institution in which the lender takes an interest in a life  
7 17 insurance policy solely to secure repayment of a loan or, if  
7 18 there is a default on the loan and the policy is transferred,  
7 19 the transfer of such a policy by the lender, provided that the  
7 20 default itself is not pursuant to an agreement or  
7 21 understanding with any other person for the purpose of evading  
7 22 regulation under this chapter.  
7 23 (4) A loan made by a lender that does not violate  
7 24 insurance premium finance law, provided that the premium  
7 25 finance loan is not described in paragraph "b".  
7 26 (5) An agreement where all the parties are closely related  
7 27 to the insured by blood or law; have a lawful substantial  
7 28 economic interest in the continued life, health, and bodily  
7 29 safety of the person insured; or are trusts established  
7 30 primarily for the benefit of such parties.  
7 31 (6) Any designation, consent, or agreement by an insured  
7 32 who is an employee of an employer in connection with the  
7 33 purchase by the employer, or trust established by the  
7 34 employer, of life insurance on the life of the employee.  
7 35 (7) A bona fide business succession planning arrangement  
8 1 between one or more of the following:  
8 2 (a) Shareholders in a corporation or between a corporation  
8 3 and one or more of its shareholders or one or more trusts  
8 4 established by its shareholders.  
8 5 (b) Partners in a partnership or between a partnership and  
8 6 one or more of its partners or one or more trusts established  
8 7 by its partners.  
8 8 (c) Members in a limited liability company or between a  
8 9 limited liability company and one or more of its members or  
8 10 one or more trusts established by its members.  
8 11 (8) An agreement entered into by a service recipient, or a  
8 12 trust established by the service recipient, and a service  
8 13 provider, or a trust established by the service provider, who  
8 14 performs significant services for the service recipient's  
8 15 trade or business.  
8 16 (9) Any other contract, transaction, or arrangement  
8 17 exempted from the definition of viatical settlement contract  
8 18 by the commissioner based on a determination that the  
8 19 contract, transaction, or arrangement is not of the type  
8 20 intended to be regulated by this chapter.  
8 21 15. a. "Viatical settlement provider" means a person,  
8 22 other than a viator, that enters into or effectuates a  
8 23 viatical settlement contract with a viator resident in this  
8 24 state.  
8 25 b. "Viatical settlement provider" does not include any of  
8 26 the following:  
8 27 (1) A bank, savings bank, savings and loan association,  
8 28 credit union, or other licensed lending institution that takes  
8 29 an assignment of a life insurance policy solely as collateral  
8 30 for a loan.  
8 31 (2) A premium finance company making premium finance loans  
8 32 and exempted by the commissioner from the licensing  
8 33 requirement under the premium finance laws that takes an  
8 34 assignment of a life insurance policy solely as collateral for  
8 35 a loan.  
9 1 (3) The issuer of the life insurance policy.  
9 2 (4) An authorized or eligible insurer that provides  
9 3 stop-loss coverage or financial guaranty insurance to a  
9 4 viatical settlement provider, purchaser, financing entity,  
9 5 special purpose entity, or related provider trust.  
9 6 (5) A natural person who enters into or effectuates no  
9 7 more than one agreement in a calendar year for the transfer of  
9 8 life insurance policies for any value less than the expected  
9 9 death benefit.  
9 10 (6) A financing entity.  
9 11 (7) A special purpose entity.  
9 12 (8) A related provider trust.  
9 13 (9) A viatical settlement purchaser.  
9 14 (10) Any other person that the commissioner determines is  
9 15 not the type of person intended to be covered by the  
9 16 definition of viatical settlement provider.

9 17 16. a. "Viatical settlement purchaser" means a person who  
9 18 provides a sum of money as consideration for a life insurance  
9 19 policy or an interest in the death benefits of a life  
9 20 insurance policy, or a person who owns or acquires or is  
9 21 entitled to a beneficial interest in a trust that owns a  
9 22 viatical settlement contract or is the beneficiary of a life  
9 23 insurance policy that has been or will be the subject of a  
9 24 viatical settlement contract, for the purpose of deriving an  
9 25 economic benefit.

9 26 b. "Viatical settlement purchaser" does not include any of  
9 27 the following:

9 28 (1) A licensee under this chapter.

9 29 (2) An accredited investor or qualified institutional  
9 30 buyer as defined, respectively, in 17 C.F.R. } 230.501(a) or  
9 31 17 C.F.R. } 230.144A as promulgated by the United States  
9 32 securities and exchange commission under the federal  
9 33 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.

9 34 (3) A financing entity.

9 35 (4) A special purpose entity.

10 1 (5) A related provider trust.

10 2 17. "Viaticated policy" means a life insurance policy or  
10 3 certificate that has been acquired by a viatical settlement  
10 4 provider pursuant to a viatical settlement contract.

10 5 18. a. "Viator" means ~~a person selling~~ the owner of a  
10 6 life insurance policy or a certificate holder under a group  
10 7 policy who resides in this state and enters or seeks to enter  
10 8 into a viatical settlement contract. "Viator" includes but is  
10 9 not limited to an owner of a life insurance policy or a  
10 10 certificate holder under a group policy insuring the life of  
10 11 an individual with a terminal or chronic illness or condition  
10 12 except where specifically addressed. If there is more than  
10 13 one viator on a single policy and the viators are residents of  
10 14 different states, the transaction shall be governed by the law  
10 15 of the state in which the viator having the largest percentage  
10 16 ownership resides or, if the viators hold equal ownership, the  
10 17 state of residence of one viator agreed upon in writing by all  
10 18 the viators.

10 19 b. "Viator" does not include any of the following:

10 20 (1) A licensee under this chapter, including a life  
10 21 insurance producer acting as a viatical settlement broker  
10 22 pursuant to this chapter.

10 23 (2) A qualified institutional buyer as defined in 17  
10 24 C.F.R. } 230.144=144A as promulgated by the United States  
10 25 securities and exchange commission under the federal  
10 26 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.

10 27 (3) A financing entity.

10 28 (4) A special purpose entity.

10 29 (5) A related provider trust.

10 30 Sec. 3. Section 508E.3, Code 2007, is amended by striking  
10 31 the section and inserting in lieu thereof the following:

10 32 508E.3 LICENSE AND BOND REQUIREMENTS.

10 33 1. a. A person shall not operate as a viatical settlement  
10 34 provider or viatical settlement broker without first obtaining  
10 35 a license from the commissioner of the state of residence of  
11 1 the viator.

11 2 b. (1) A life insurance producer who has been duly  
11 3 licensed as a resident insurance producer with a life line of  
11 4 authority in this state or the life insurance producer's home  
11 5 state for at least one year and is licensed as a nonresident  
11 6 producer in this state shall be deemed to meet the licensing  
11 7 requirements of this section and shall be permitted to operate  
11 8 as a viatical settlement broker.

11 9 (2) Not later than thirty days from the first day of  
11 10 operating as a viatical settlement broker, the life insurance  
11 11 producer shall notify the commissioner that the life insurance  
11 12 producer is acting as a viatical settlement broker on a form  
11 13 prescribed by the commissioner, and shall pay any applicable  
11 14 fee of up to one hundred dollars as provided by rules adopted  
11 15 by the commissioner. The notification shall include an  
11 16 acknowledgment by the life insurance producer that the life  
11 17 insurance producer will operate as a viatical settlement  
11 18 broker in accordance with this chapter.

11 19 (3) The insurer that issued the policy being viaticated  
11 20 shall not be responsible for any act or omission of a viatical  
11 21 settlement broker or viatical settlement provider arising out  
11 22 of or in connection with the viatical settlement transaction,  
11 23 unless the insurer receives compensation for the placement of  
11 24 a viatical settlement contract from the viatical settlement  
11 25 provider or viatical settlement broker in connection with the  
11 26 viatical settlement contract.

11 27 c. A person licensed as an attorney, certified public

11 28 accountant, or financial planner accredited by a nationally  
11 29 recognized accreditation agency who is retained to represent  
11 30 the viator, whose compensation is not paid directly or  
11 31 indirectly by the viatical settlement provider, may negotiate  
11 32 viatical settlement contracts on behalf of the viator without  
11 33 having to obtain a license as a viatical settlement broker.

11 34 2. An application for a viatical settlement provider or  
11 35 viatical settlement broker license shall be made to the  
12 1 commissioner by the applicant on a form prescribed by the  
12 2 commissioner, and the application shall be accompanied by a  
12 3 fee of not more than one hundred dollars as provided by rules  
12 4 adopted by the commissioner.

12 5 3. A license may be renewed from year to year on the  
12 6 anniversary date upon payment of the annual renewal fee of not  
12 7 more than one hundred dollars as provided by rules adopted by  
12 8 the commissioner. A failure to pay the fee by the renewal  
12 9 date results in expiration of the license.

12 10 4. An applicant shall provide information on forms  
12 11 required by the commissioner. The commissioner shall have  
12 12 authority, at any time, to require the applicant to fully  
12 13 disclose the identity of all stockholders, partners, officers,  
12 14 members, and employees, and the commissioner may, in the  
12 15 exercise of the commissioner's discretion, refuse to issue a  
12 16 license in the name of a legal entity if not satisfied that  
12 17 any officer, employee, stockholder, partner, or member thereof  
12 18 who may materially influence the applicant's conduct meets the  
12 19 standards of this chapter.

12 20 5. A license issued to a legal entity authorizes all  
12 21 partners, officers, members, and designated employees to act  
12 22 as viatical settlement providers or viatical settlement  
12 23 brokers, as applicable, under the license, and all those  
12 24 persons shall be named in the application and any supplements  
12 25 to the application.

12 26 6. Upon the filing of an application and the payment of  
12 27 the license fee, the commissioner shall make an investigation  
12 28 of each applicant and issue a license if the commissioner  
12 29 finds that the applicant complies with all of the following:

12 30 a. If a viatical settlement provider, has provided a  
12 31 detailed plan of operation.

12 32 b. Is competent and trustworthy and intends to act in good  
12 33 faith in the capacity involved by the license applied for.

12 34 c. Has a good business reputation and has had experience,  
12 35 training, or education so as to be qualified in the business  
13 1 for which the license is applied for.

13 2 d. (1) If a viatical settlement provider, has  
13 3 demonstrated evidence of financial responsibility in a format  
13 4 prescribed by the commissioner through either a surety bond  
13 5 executed and issued by an insurer authorized to issue surety  
13 6 bonds in this state, or a deposit of cash, certificates of  
13 7 deposit, or securities, or any combination thereof in the  
13 8 amount of two hundred fifty thousand dollars.

13 9 (2) If a viatical settlement broker, has demonstrated  
13 10 evidence of financial responsibility in a format prescribed by  
13 11 the commissioner through either a surety bond executed and  
13 12 issued by an insurer authorized to issue surety bonds in this  
13 13 state, or a deposit of cash, certificates of deposit, or  
13 14 securities, or any combination thereof in the amount of two  
13 15 hundred fifty thousand dollars.

13 16 (3) The commissioner may demand evidence of financial  
13 17 responsibility at any time the commissioner deems necessary.

13 18 (4) Any surety bond issued pursuant to this paragraph "d"  
13 19 shall be in the favor of this state and shall specifically  
13 20 authorize recovery by the commissioner on behalf of any person  
13 21 in this state who sustained damages as the result of an  
13 22 erroneous act, failure to act, conviction of fraud, or  
13 23 conviction of an unfair practice by the viatical settlement  
13 24 provider or viatical settlement broker.

13 25 (5) Notwithstanding any provision of this paragraph "d" to  
13 26 contrary, the commissioner shall accept, as evidence of  
13 27 financial responsibility, proof that financial instruments in  
13 28 accordance with the requirements in this paragraph "d" have  
13 29 been filed with one state where the applicant is licensed as a  
13 30 viatical settlement provider or viatical settlement broker.

13 31 e. If a legal entity, provides a certificate of good  
13 32 standing from the state of its domicile.

13 33 f. If a viatical settlement provider or viatical  
13 34 settlement broker, has provided an antifraud plan that meets  
13 35 the requirements of section 508E.14, subsection 7.

14 1 7. The commissioner shall not issue a license to a  
14 2 nonresident applicant unless a written designation of an agent  
14 3 for service of process is filed and maintained with the

14 4 commissioner or the applicant has filed with the commissioner  
14 5 the applicant's written irrevocable consent that any action  
14 6 against the applicant may be commenced against the applicant  
14 7 by service of process on the commissioner.

14 8 8. A viatical settlement provider or viatical settlement  
14 9 broker shall provide to the commissioner new or revised  
14 10 information about officers, ten=percent=or=more stockholders,  
14 11 partners, directors, members, or designated employees within  
14 12 thirty days of the change.

14 13 9. An individual licensed as a viatical settlement broker  
14 14 shall complete on a biennial basis fifteen hours of training  
14 15 related to viatical settlements and viatical settlement  
14 16 transactions, as required by the commissioner; provided,  
14 17 however, that a life insurance producer who is operating as a  
14 18 viatical settlement broker pursuant to subsection 1, paragraph  
14 19 "b", shall not be subject to the requirements of this  
14 20 subsection. Any person failing to meet the requirements of  
14 21 this subsection shall be subject to the penalties imposed by  
14 22 the commissioner.

14 23 10. Fees collected pursuant to this section shall be  
14 24 deposited into the general fund of the state.

14 25 Sec. 4. Section 508E.4, Code 2007, is amended by striking  
14 26 the section and inserting in lieu thereof the following:

14 27 508E.4 LICENSE REVOCATION AND DENIAL.

14 28 1. The commissioner may refuse to issue, suspend, revoke,  
14 29 or refuse to renew the license of a viatical settlement  
14 30 provider or viatical settlement broker if the commissioner  
14 31 finds that any of the following applies:

14 32 a. There was any material misrepresentation in the  
14 33 application for the license.

14 34 b. The licensee or any officer, partner, member, or key  
14 35 management personnel has been convicted of fraudulent or  
15 1 dishonest practices, is subject to a final administrative  
15 2 action, or is otherwise shown to be untrustworthy or  
15 3 incompetent.

15 4 c. The viatical settlement provider demonstrates a pattern  
15 5 of unreasonable payments to viators.

15 6 d. The licensee or any officer, partner, member, or key  
15 7 management personnel has been found guilty of, or has pleaded  
15 8 guilty or nolo contendere to, any felony, or to a misdemeanor  
15 9 involving fraud or moral turpitude, regardless of whether a  
15 10 judgment of conviction has been entered by the court.

15 11 e. The viatical settlement provider has entered into any  
15 12 viatical settlement contract that has not been approved  
15 13 pursuant to this chapter.

15 14 f. The viatical settlement provider has failed to honor  
15 15 contractual obligations set out in a viatical settlement  
15 16 contract.

15 17 g. The licensee no longer meets the requirements for  
15 18 initial licensure.

15 19 h. The viatical settlement provider has assigned,  
15 20 transferred, or pledged a viaticated policy to a person other  
15 21 than a viatical settlement provider licensed in this state,  
15 22 viatical settlement purchaser, an accredited investor, or  
15 23 qualified institutional buyer as defined respectively in 17  
15 24 C.F.R. } 230.501(a) or 17 C.F.R. } 230.144A as promulgated by  
15 25 the United States securities and exchange commission under the  
15 26 federal Securities Act of 1933, as amended, 15 U.S.C. } 77a et  
15 27 seq., a financing entity, special purpose entity, or related  
15 28 provider trust.

15 29 i. The licensee or any officer, partner, member, or key  
15 30 management personnel has violated any provision of this  
15 31 chapter.

15 32 2. The commissioner may suspend, revoke, or refuse to  
15 33 renew the license of a viatical settlement broker or a life  
15 34 insurance producer operating as a viatical settlement broker  
15 35 pursuant to this chapter if the commissioner finds that the  
16 1 viatical settlement broker or life insurance producer has  
16 2 violated the provisions of this chapter or has otherwise  
16 3 engaged in bad faith conduct with one or more viators.

16 4 3. If the commissioner denies a license application or  
16 5 suspends, revokes, or refuses to renew the license of a  
16 6 viatical settlement provider or viatical settlement broker, or  
16 7 suspends, revokes, or refuses to renew a license of a life  
16 8 insurance producer operating as a viatical settlement broker  
16 9 pursuant to this chapter, the commissioner shall conduct a  
16 10 hearing in accordance with chapter 17A.

16 11 Sec. 5. NEW SECTION. 508E.5 APPROVAL OF VIATICAL  
16 12 SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS.

16 13 A person shall not use a viatical settlement contract form  
16 14 or provide to a viator a disclosure statement form in this

16 15 state unless first filed with and approved by the  
16 16 commissioner. The commissioner shall disapprove a viatical  
16 17 settlement contract form or disclosure statement form if, in  
16 18 the commissioner's opinion, the contract or provisions  
16 19 contained therein fail to meet the requirements of sections  
16 20 508E.8, 508E.10, 508E.13, and 508.14, subsection 2, or are  
16 21 unreasonable, contrary to the interests of the public, or  
16 22 otherwise misleading or unfair to the viator. At the  
16 23 commissioner's discretion, the commissioner may require the  
16 24 submission of advertising material.

16 25 Sec. 6. NEW SECTION. 508E.6 REPORTING REQUIREMENTS AND  
16 26 PRIVACY.

16 27 1. Each viatical settlement provider shall file with the  
16 28 commissioner on or before March 1 of each year an annual  
16 29 statement containing such information as the commissioner may  
16 30 adopt by rule. Such information shall be limited to only  
16 31 those transactions where the viator is a resident of this  
16 32 state. Notwithstanding chapter 22, individual transaction  
16 33 data regarding the business of viatical settlements or data  
16 34 that could compromise the privacy of personal, financial, and  
16 35 health information of the viator or insured shall be filed  
17 1 with the commissioner on a confidential basis.

17 2 2. Except as otherwise allowed or required by law, a  
17 3 viatical settlement provider, viatical settlement broker,  
17 4 insurance company, insurance producer, information bureau,  
17 5 rating agency or company, or any other person with actual  
17 6 knowledge of an insured's identity shall not disclose that  
17 7 identity as an insured, or the insured's financial or medical  
17 8 information to any other person unless the disclosure is any  
17 9 of the following:

17 10 a. Necessary to effect a viatical settlement between the  
17 11 viator and a viatical settlement provider and the viator and  
17 12 insured have provided prior written consent to the disclosure.

17 13 b. Provided in response to an investigation or examination  
17 14 by the commissioner or any other governmental officer or  
17 15 agency or pursuant to the requirements of section 508E.14,  
17 16 subsection 3.

17 17 c. A term of or condition to the transfer of a policy by  
17 18 one viatical settlement provider to another viatical  
17 19 settlement provider.

17 20 d. Necessary to permit a financing entity, related  
17 21 provider trust, or special purpose entity to finance the  
17 22 purchase of policies by a viatical settlement provider and the  
17 23 viator and insured have provided prior written consent to the  
17 24 disclosure.

17 25 e. Necessary to allow the viatical settlement provider,  
17 26 viatical settlement broker, or their authorized  
17 27 representatives to make contacts for the purpose of  
17 28 determining health status.

17 29 f. Required to purchase stop-loss coverage or financial  
17 30 guaranty insurance.

17 31 Sec. 7. NEW SECTION. 508E.7 EXAMINATION OR  
17 32 INVESTIGATIONS.

17 33 1. AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

17 34 a. (1) The commissioner may conduct an examination under  
17 35 this chapter of a licensee as often as the commissioner in the  
18 1 commissioner's discretion deems appropriate after considering  
18 2 the factors set forth in this paragraph "a".

18 3 (2) In scheduling and determining the nature, scope, and  
18 4 frequency of the examinations, the commissioner shall consider  
18 5 such matters as the consumer complaints, results of financial  
18 6 statement analyses and ratios, changes in management or  
18 7 ownership, actuarial opinions, reports of independent  
18 8 certified public accountants, and other relevant criteria as  
18 9 determined by the commissioner.

18 10 b. For purposes of completing an examination of a licensee  
18 11 under this chapter, the commissioner may examine or  
18 12 investigate any person, or the business of any person, in so  
18 13 far as the examination or investigation is, in the sole  
18 14 discretion of the commissioner, necessary or material to the  
18 15 examination of the licensee.

18 16 c. In lieu of an examination under this chapter of any  
18 17 foreign or alien licensee licensed in this state, the  
18 18 commissioner may, at the commissioner's discretion, accept an  
18 19 examination report on the licensee as prepared by the  
18 20 commissioner for the licensee's state of domicile or  
18 21 port-of-entry state.

18 22 d. As far as practical, the examination of a foreign or  
18 23 alien licensee shall be made in cooperation with the insurance  
18 24 supervisory officials of other states in which the licensee  
18 25 transacts business.



18 26 2. RECORD RETENTION REQUIREMENTS.

18 27 a. A person required to be licensed pursuant to section  
18 28 508E.3 shall for five years retain copies of all of the  
18 29 following:

18 30 (1) Proposed, offered, or executed contracts, purchase  
18 31 agreements, underwriting documents, policy forms, and  
18 32 applications from the date of the proposal, offer, or  
18 33 execution of the contract or purchase agreement, whichever is  
18 34 later.

18 35 (2) All checks, drafts, or other evidence and  
19 1 documentation related to the payment, transfer, deposit, or  
19 2 release of funds from the date of the transaction.

19 3 (3) All other records and documents related to the  
19 4 requirements of this chapter.

19 5 b. This section does not relieve a person of the  
19 6 obligation to produce documents described in paragraph "a" to  
19 7 the commissioner after the retention period has expired if the  
19 8 person has retained the documents.

19 9 c. Records required to be retained by paragraph "a" must  
19 10 be legible and complete and may be retained in paper,  
19 11 photograph, microprocess, magnetic, mechanical, or electronic  
19 12 media, or by any process that accurately reproduces or forms a  
19 13 durable medium for the reproduction of a record.

19 14 3. CONDUCT OF EXAMINATIONS.

19 15 a. Upon determining that an examination should be  
19 16 conducted, the commissioner shall issue an examination warrant  
19 17 appointing one or more examiners to perform the examination  
19 18 and instructing them as to the scope of the examination. In  
19 19 conducting the examination, the examiner shall observe those  
19 20 guidelines and procedures set forth in the examiners handbook  
19 21 adopted by the national association of insurance  
19 22 commissioners. The commissioner may also adopt rules for such  
19 23 other guidelines or procedures as the commissioner may deem  
19 24 appropriate.

19 25 b. Every licensee or person from whom information is  
19 26 sought, its officers, directors, and agents shall provide to  
19 27 the examiners timely, convenient, and free access at all  
19 28 reasonable hours at its offices to all books, records,  
19 29 accounts, papers, documents, assets, and computer or other  
19 30 recordings relating to the property, assets, business, and  
19 31 affairs of the licensee being examined. The officers,  
19 32 directors, employees, and agents of the licensee or person  
19 33 shall facilitate the examination and aid in the examination so  
19 34 far as it is in their power to do so. The refusal of a  
19 35 licensee, by its officers, directors, employees, or agents, to  
20 1 submit to examination or to comply with any reasonable written  
20 2 request of the commissioner shall be grounds for suspension or  
20 3 refusal of, or nonrenewal of, any license or authority held by  
20 4 the licensee to engage in the viatical settlement business or  
20 5 other business subject to the commissioner's jurisdiction.  
20 6 Any proceedings for suspension, revocation, or refusal of any  
20 7 license or authority shall be conducted pursuant to section  
20 8 507B.6A.

20 9 c. The commissioner shall have the power to issue  
20 10 subpoenas, to administer oaths, and to examine under oath any  
20 11 person as to any matter pertinent to the examination. Upon  
20 12 the failure or refusal of a person to obey a subpoena, the  
20 13 commissioner may petition a court of competent jurisdiction,  
20 14 and upon proper showing, the court may enter an order  
20 15 compelling the witness to appear and testify or produce  
20 16 documentary evidence. A failure to obey the court order shall  
20 17 be punishable as contempt of court.

20 18 d. When making an examination under this chapter, the  
20 19 commissioner may retain attorneys, appraisers, independent  
20 20 actuaries, independent certified public accountants, or other  
20 21 professionals and specialists as examiners, the reasonable  
20 22 cost of which shall be borne by the licensee that is the  
20 23 subject of the examination.

20 24 e. Nothing contained in this chapter shall be construed to  
20 25 limit the commissioner's authority to terminate or suspend an  
20 26 examination in order to pursue other legal or regulatory  
20 27 action pursuant to the insurance laws of this state. Findings  
20 28 of fact and conclusions made pursuant to any examination shall  
20 29 be prima facie evidence in any legal or regulatory action.

20 30 f. The commissioner's authority to use and, if  
20 31 appropriate, to make public any final or preliminary  
20 32 examination report, any examiner or licensee workpapers, or  
20 33 other documents, or any other information discovered or  
20 34 developed during the course of any examination in the  
20 35 furtherance of any legal or regulatory action shall be  
21 1 permitted consistent with section 507.14.

21 2 4. EXAMINATION REPORTS.

21 3 a. Examination reports shall be comprised of only facts  
21 4 appearing upon the books, records, or other documents of the  
21 5 licensee, its agents, or other persons examined, or as  
21 6 ascertained from the testimony of its officers, agents, or  
21 7 other persons examined concerning its affairs, and such  
21 8 conclusions and recommendations as the examiners find  
21 9 reasonably warranted from the facts.

21 10 b. Not later than sixty days following completion of the  
21 11 examination, the examiner in charge shall file with the  
21 12 commissioner a verified written report of examination under  
21 13 oath. Upon receipt of the verified report, the commissioner  
21 14 shall transmit the report to the licensee examined, together  
21 15 with a notice that shall afford the licensee examined a  
21 16 reasonable opportunity of not more than thirty days to make a  
21 17 written submission or rebuttal with respect to any matters  
21 18 contained in the examination report.

21 19 c. In the event the commissioner determines that  
21 20 regulatory action is appropriate as a result of an  
21 21 examination, the commissioner may initiate any proceedings or  
21 22 actions provided by law.

21 23 5. CONFIDENTIALITY OF EXAMINATION INFORMATION.

21 24 a. Notwithstanding chapter 22, the names and individual  
21 25 identification data for all violators shall be considered  
21 26 private and confidential information and shall not be  
21 27 disclosed by the commissioner, unless required by law.

21 28 b. Except as otherwise provided in this chapter, all  
21 29 examination reports, working papers, recorded information,  
21 30 documents, and copies thereof produced by, obtained by, or  
21 31 disclosed to the commissioner or any other person in the  
21 32 course of an examination made under this chapter, or in the  
21 33 course of an analysis or investigation by the commissioner of  
21 34 the financial condition or market conduct of a licensee, shall  
21 35 be confidential by law and privileged, shall not be subject to  
22 1 chapter 22, shall not be subject to subpoena, and shall not be  
22 2 subject to discovery or admissible in evidence in any private  
22 3 civil action. The commissioner is authorized to use the  
22 4 documents, materials, or other information in the furtherance  
22 5 of any regulatory or legal action brought as part of the  
22 6 commissioner's official duties.

22 7 c. Documents, materials, or other information, including  
22 8 but not limited to all working papers and copies, in the  
22 9 possession or control of the national association of insurance  
22 10 commissioners and its affiliates and subsidiaries shall be  
22 11 confidential by law and privileged, shall not be subject to  
22 12 chapter 22, shall not be subject to subpoena, and shall not be  
22 13 subject to discovery or admissible in evidence in any private  
22 14 civil action if they are any of the following:

22 15 (1) Created, produced, or obtained by or disclosed to the  
22 16 national association of insurance commissioners and its  
22 17 affiliates and subsidiaries in the course of assisting an  
22 18 examination made under this chapter, or assisting the  
22 19 commissioner in the analysis or investigation of the financial  
22 20 condition or market conduct of a licensee.

22 21 (2) Disclosed to the national association of insurance  
22 22 commissioners and its affiliates and subsidiaries under  
22 23 paragraph "d" by the commissioner.

22 24 (3) For the purposes of paragraph "b", "chapter" includes  
22 25 the law of another state or jurisdiction that is substantially  
22 26 similar to this chapter.

22 27 d. Neither the commissioner nor any person that received  
22 28 the documents, materials, or other information while acting  
22 29 under the authority of the commissioner, including the  
22 30 national association of insurance commissioners and its  
22 31 affiliates and subsidiaries, shall be permitted to testify in  
22 32 any private civil action concerning any confidential  
22 33 documents, materials, or information subject to paragraph "a".

22 34 e. In order to assist in the performance of the  
22 35 commissioner's duties, the commissioner may do all of the  
23 1 following:

23 2 (1) Share documents, materials, or other information,  
23 3 including the confidential and privileged documents,  
23 4 materials, or information subject to paragraph "a", with other  
23 5 state, federal, and international regulatory agencies, with  
23 6 the national association of insurance commissioners and its  
23 7 affiliates and subsidiaries, and with state, federal, and  
23 8 international law enforcement authorities, provided that the  
23 9 recipient agrees to maintain the confidentiality and  
23 10 privileged status of the documents, materials, communications,  
23 11 or other information.

23 12 (2) Receive documents, materials, communications, or

23 13 information, including otherwise confidential and privileged  
23 14 documents, materials, or information, from the national  
23 15 association of insurance commissioners and its affiliates and  
23 16 subsidiaries, notwithstanding chapter 22, and from regulatory  
23 17 and law enforcement officials of other foreign or domestic  
23 18 jurisdictions, and shall maintain as confidential or  
23 19 privileged any documents, materials, or information received  
23 20 with notice or the understanding that it is confidential or  
23 21 privileged under the laws of the jurisdiction that is the  
23 22 source of the documents, materials, or information.

23 23 (3) Enter into agreements governing sharing and use of  
23 24 information consistent with section 507.14, subsection 4.

23 25 f. No waiver of any applicable privilege or claim of  
23 26 confidentiality in the documents, materials, or information  
23 27 shall occur as a result of disclosure to the commissioner  
23 28 under this section or as a result of sharing as authorized in  
23 29 paragraph "c".

23 30 g. A privilege established under the law of any state or  
23 31 jurisdiction that is substantially similar to the privilege  
23 32 established under this subsection shall be available and  
23 33 enforced in any proceeding in, and in any court of, this  
23 34 state.

23 35 h. Nothing contained in this chapter shall prevent or be  
24 1 construed as prohibiting the commissioner from disclosing the  
24 2 content of an examination report, preliminary examination  
24 3 report or results, or any matter relating thereto, to the  
24 4 commissioner of any other state or country, or to law  
24 5 enforcement officials of this or any other state or agency of  
24 6 the federal government at any time or to the national  
24 7 association of insurance commissioners, so long as such agency  
24 8 or office receiving the report or matters relating thereto  
24 9 agrees in writing to hold it confidential and in a manner  
24 10 consistent with this chapter.

#### 24 11 6. CONFLICT OF INTEREST.

24 12 a. An examiner may not be appointed by the commissioner if  
24 13 the examiner, either directly or indirectly, has a conflict of  
24 14 interest or is affiliated with the management of or owns a  
24 15 pecuniary interest in any person subject to examination under  
24 16 this chapter. This section shall not be construed to  
24 17 automatically preclude an examiner from being any of the  
24 18 following:

24 19 (1) A viator.

24 20 (2) An insured in a viaticated insurance policy.

24 21 (3) A beneficiary in an insurance policy that is proposed  
24 22 to be viaticated.

24 23 b. Notwithstanding the requirements of paragraph "a", the  
24 24 commissioner may retain from time to time, on an individual  
24 25 basis, qualified actuaries, certified public accountants, or  
24 26 other similar individuals who are independently practicing  
24 27 their professions, even though these persons may from time to  
24 28 time be similarly employed or retained by persons subject to  
24 29 examination under this chapter.

#### 24 30 7. COST OF EXAMINATIONS.

24 31 a. The commissioner may appoint insurance examiners who,  
24 32 while conducting examinations, shall possess all the powers  
24 33 conferred upon the commissioner for such purposes. The entire  
24 34 time of the examiners shall be under the control of the  
24 35 commissioner, and shall be employed as the commissioner may  
25 1 direct.

25 2 b. The commissioner may, when in the commissioner's  
25 3 judgment it is advisable, appoint assistants to aid in making  
25 4 examinations. The examiners shall be compensated on the basis  
25 5 of the normal workweek of the insurance division at a salary  
25 6 to be fixed by the commissioner subject, however, to the  
25 7 provisions of section 505.14. The compensation shall be paid  
25 8 from appropriations for such purposes upon certification of  
25 9 the commissioner, which shall be reimbursed as provided in  
25 10 sections 507.8 and 507.9.

25 11 c. When making an examination under this chapter, the  
25 12 commissioner may retain attorneys, appraisers, independent  
25 13 actuaries, independent certified public accountants, or other  
25 14 professionals and specialists as examiners, the reasonable  
25 15 cost of which shall be borne by the company which is the  
25 16 subject of the examination.

25 17 d. The commissioner shall, upon the completion of an  
25 18 examination, or at such regular intervals prior to completion  
25 19 as the commissioner determines, prepare an account of the  
25 20 costs incurred in performing and preparing the report of such  
25 21 examinations which shall be charged to and paid by the company  
25 22 examined, and upon failure or refusal of a company examined to  
25 23 pay such costs, the same may be recovered by the commissioner

25 24 or the attorney general in an action brought in the name of  
25 25 the state, and the commissioner may also revoke the  
25 26 certificate of authority of such company to transact business  
25 27 within this state.

25 28 8. IMMUNITY FROM LIABILITY.

25 29 a. No cause of action shall arise, nor shall any liability  
25 30 be imposed, against the commissioner, the commissioner's  
25 31 authorized representatives, or any examiner appointed by the  
25 32 commissioner for any statements made or conduct performed in  
25 33 good faith while carrying out the provisions of this chapter.

25 34 b. No cause of action shall arise, nor shall any liability  
25 35 be imposed, against any person for the act of communicating or  
26 1 delivering information or data to the commissioner or the  
26 2 commissioner's authorized representative or examiner pursuant  
26 3 to an examination made under this chapter, if the act of  
26 4 communication or delivery was performed in good faith and  
26 5 without fraudulent intent or the intent to deceive. This  
26 6 paragraph does not abrogate or modify in any way any common  
26 7 law or statutory privilege or immunity heretofore enjoyed by  
26 8 any person identified in paragraph "a".

26 9 c. A person identified in paragraph "a" or "b" shall be  
26 10 entitled to an award of attorney fees and costs if the person  
26 11 is the prevailing party in a civil cause of action for libel,  
26 12 slander, or any other relevant tort arising out of activities  
26 13 in carrying out the provisions of this chapter and the party  
26 14 bringing the action was not substantially justified in doing  
26 15 so. For purposes of this paragraph, a proceeding is  
26 16 "substantially justified" if it had a reasonable basis in law  
26 17 or fact at the time that it was initiated.

26 18 9. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. The  
26 19 commissioner may investigate suspected fraudulent viatical  
26 20 settlement acts and persons engaged in the business of  
26 21 viatical settlements.

26 22 Sec. 8. NEW SECTION. 508E.8 DISCLOSURE TO VIATOR.

26 23 1. With each application for a viatical settlement, a  
26 24 viatical settlement provider or viatical settlement broker  
26 25 shall provide the viator with at least the following  
26 26 disclosures no later than the time the application for the  
26 27 viatical settlement contract is signed by all parties. The  
26 28 disclosures shall be provided in a separate document that is  
26 29 signed by the viator and the viatical settlement provider or  
26 30 viatical settlement broker, and shall provide all of the  
26 31 following information:

26 32 a. There are possible alternatives to viatical settlement  
26 33 contracts including any accelerated death benefits or policy  
26 34 loans offered under the viator's life insurance policy.

26 35 b. That a viatical settlement broker represents  
27 1 exclusively the viator, and not the insurer or the viatical  
27 2 settlement provider, and owes a fiduciary duty to the viator,  
27 3 including a duty to act according to the viator's instructions  
27 4 and in the best interest of the viator.

27 5 c. Some or all of the proceeds of the viatical settlement  
27 6 may be taxable under federal income tax and state franchise  
27 7 and income taxes, and assistance should be sought from a  
27 8 professional tax advisor.

27 9 d. Proceeds of the viatical settlement could be subject to  
27 10 the claims of creditors.

27 11 e. Receipt of the proceeds of a viatical settlement may  
27 12 adversely affect the viator's eligibility for Medicaid or  
27 13 other government benefits or entitlements, and advice should  
27 14 be obtained from the appropriate government agencies.

27 15 f. The viator has the right to rescind a viatical  
27 16 settlement contract before the earlier of sixty days after the  
27 17 date upon which the viatical settlement contract is executed  
27 18 by all parties or thirty days after the viatical settlement  
27 19 proceeds have been paid to the viator, as provided in section  
27 20 508E.10, subsection 3. Recision, if exercised by the viator,  
27 21 is effective only if both notice of the recision is given, and  
27 22 the viator repays all proceeds and any premiums, loans, and  
27 23 loan interest paid on account of the viatical settlement  
27 24 within the recision period. If the insured dies during the  
27 25 recision period, the viatical settlement contract shall be  
27 26 deemed to have been rescinded, subject to repayment by the  
27 27 viator or the viator's estate of all viatical settlement  
27 28 proceeds and any premiums, loans, and loan interest that have  
27 29 been paid by the viatical settlement provider or purchaser  
27 30 within sixty days of the insured's death.

27 31 g. Funds will be sent to the viator within three business  
27 32 days after the viatical settlement provider has received the  
27 33 insurer's or group administrator's written acknowledgment that  
27 34 ownership of the policy or interest in the certificate has

27 35 been transferred and the beneficiary has been designated.

28 1 h. Entering into a viatical settlement contract may cause  
28 2 other rights or benefits, including conversion rights and  
28 3 waiver of premium benefits, that may exist under the policy or  
28 4 certificate, to be forfeited by the viator. Assistance should  
28 5 be sought from a financial adviser.

28 6 i. Disclosure to a viator shall include distribution of a  
28 7 brochure describing the process of viatical settlements. The  
28 8 national association of insurance commissioners form for the  
28 9 brochure shall be used unless another form is developed or  
28 10 approved by the commissioner.

28 11 j. The disclosure document shall contain the following  
28 12 language:

28 13 "All medical, financial, or personal information solicited  
28 14 or obtained by a viatical settlement provider or viatical  
28 15 settlement broker about an insured, including the insured's  
28 16 identity or the identity of family members, a spouse, or a  
28 17 significant other may be disclosed as necessary to effect the  
28 18 viatical settlement between the viator and the viatical  
28 19 settlement provider. If you are asked to provide this  
28 20 information, you will be asked to consent to the disclosure.  
28 21 The information may be provided to someone who buys the policy  
28 22 or provides funds for the purchase. You may be asked to renew  
28 23 your permission to share information every two years."

28 24 k. Following execution of a viatical contract, the insured  
28 25 may be contacted for the purpose of determining the insured's  
28 26 health status and to confirm the insured's residential or  
28 27 business street address and telephone number, or as otherwise  
28 28 provided in this chapter. This contact shall be limited to  
28 29 once every three months if the insured has a life expectancy  
28 30 of more than one year, and no more than once per month if the  
28 31 insured has a life expectancy of one year or less. All such  
28 32 contracts shall be made only by a viatical settlement provider  
28 33 licensed in the state in which the viator resided at the time  
28 34 of the viatical settlement, or by the authorized  
28 35 representative of a duly licensed viatical settlement  
29 1 provider.

29 2 2. A viatical settlement provider shall provide the viator  
29 3 with at least the following disclosures no later than the date  
29 4 the viatical settlement contract is signed by all parties.

29 5 The disclosures shall be conspicuously displayed in the  
29 6 viatical settlement contract or in a separate document signed  
29 7 by the viator and provide all of the following information:

29 8 a. The affiliation, if any, between the viatical  
29 9 settlement provider and the issuer of the insurance policy to  
29 10 be viaticated.

29 11 b. The name, business address, and telephone number of the  
29 12 viatical settlement provider.

29 13 c. Any affiliations or contractual arrangements between  
29 14 the viatical settlement provider and the viatical settlement  
29 15 purchaser.

29 16 d. If an insurance policy to be viaticated has been issued  
29 17 as a joint policy or involves family riders or any coverage of  
29 18 a life other than the insured under the policy to be  
29 19 viaticated, a notice of the viator's possible loss of coverage  
29 20 on the other lives under the policy and to consult with the  
29 21 viator's insurance producer or the insurer issuing the policy  
29 22 for advice on the proposed viatical settlement.

29 23 e. The dollar amount of the current death benefit payable  
29 24 to the viatical settlement provider under the policy or  
29 25 certificate. If known, the viatical settlement provider shall  
29 26 also disclose the availability of any additional guaranteed  
29 27 insurance benefits, the dollar amount of any accidental death  
29 28 and dismemberment benefits under the policy or certificate,  
29 29 and the extent to which the viator's interest in those  
29 30 benefits will be transferred as a result of the viatical  
29 31 settlement contract.

29 32 f. Whether the funds will be escrowed with an independent  
29 33 third party during the transfer process, and if so, provide  
29 34 the name, business address, and telephone number of the  
29 35 independent third-party escrow agent, and the fact that the  
30 1 viator or owner may inspect or receive copies of the relevant  
30 2 escrow or trust agreements or documents.

30 3 3. A viatical settlement broker shall provide the viator  
30 4 with at least the following disclosures no later than the date  
30 5 the viatical settlement contract is signed by all parties.  
30 6 The disclosures shall be conspicuously displayed in the  
30 7 viatical settlement contract or in a separate document signed  
30 8 by the viator and provide all of the following information:

30 9 a. The name, business address, and telephone number of the  
30 10 viatical settlement broker.

30 11 b. A full, complete, and accurate description of all  
30 12 offers, counteroffers, acceptances, and rejections relating to  
30 13 the proposed viatical settlement contract.

30 14 c. Any affiliations or contractual arrangements between  
30 15 the viatical settlement broker and any person making an offer  
30 16 in connection with the proposed viatical settlement contracts.

30 17 d. The amount and method of calculating the broker's  
30 18 compensation. As used in this paragraph, "compensation"  
30 19 includes anything of value paid or given to a viatical  
30 20 settlement broker for the placement of a policy.

30 21 e. Where any portion of the viatical settlement broker's  
30 22 compensation, as defined in paragraph "d", is taken from a  
30 23 proposed viatical settlement offer, the broker shall disclose  
30 24 the total amount of the viatical settlement offer and the  
30 25 percentage of the viatical settlement offer comprised by the  
30 26 viatical settlement broker's compensation.

30 27 4. If the viatical settlement provider transfers ownership  
30 28 or changes the beneficiary of the insurance policy, the  
30 29 viatical settlement provider shall communicate in writing the  
30 30 change in ownership or beneficiary to the insured within  
30 31 twenty days after the change.

30 32 5. A viatical settlement provider shall provide the  
30 33 viatical settlement purchaser with at least the following  
30 34 disclosures prior to the date the viatical settlement purchase  
30 35 agreement is signed by all parties. The disclosures shall be  
31 1 conspicuously displayed in any viatical purchase contract or  
31 2 in a separate document signed by the viatical settlement  
31 3 purchaser and viatical settlement provider or viatical  
31 4 settlement investment agent, and shall make the following  
31 5 disclosure to the viatical settlement purchaser:

31 6 a. The viatical settlement purchaser will receive no  
31 7 returns including dividends and interest, until the insured  
31 8 dies and a death claim payment is made.

31 9 b. The actual annual rate of return on a viatical  
31 10 settlement contract is dependant upon an accurate projection  
31 11 of the insured's life expectancy, and the actual date of the  
31 12 insured's death. An annual "guaranteed" rate of return is not  
31 13 determinable.

31 14 c. The viaticated life insurance contract should not be  
31 15 considered a liquid purchase since it is impossible to predict  
31 16 the exact timing of its maturity and the funds probably are  
31 17 not available until the death of the insured. There is no  
31 18 established secondary market for resale of these products by  
31 19 the viatical settlement purchaser.

31 20 d. The viatical settlement purchaser may lose all benefits  
31 21 or may receive substantially reduced benefits if the insurer  
31 22 goes out of business during the term of the viatical  
31 23 investment.

31 24 e. The purchaser is responsible for payment of the  
31 25 insurance premium or other costs related to the policy, if  
31 26 required by the terms of the viatical purchase agreement.  
31 27 These payments may reduce the viatical settlement purchaser's  
31 28 return. If a party other than the viatical settlement  
31 29 purchaser is responsible for the payment, the name and address  
31 30 of that party also shall be disclosed.

31 31 f. The viatical settlement purchaser is responsible for  
31 32 payment of the insurance premiums or other costs related to  
31 33 the policy if the insured returns to health. The viatical  
31 34 settlement provider shall disclose the amount of such  
31 35 premiums, if applicable.

32 1 g. The name, business address, and telephone number of the  
32 2 independent third party providing escrow services and the  
32 3 relationship to the viatical settlement broker.

32 4 h. The amount of any trust fees or other expenses to be  
32 5 charged to the viatical settlement purchaser shall be  
32 6 disclosed.

32 7 i. Whether the viatical settlement purchaser is entitled  
32 8 to a refund of all or part of the viatical settlement  
32 9 purchaser's investment under the settlement contract if the  
32 10 policy is later determined to be null and void.

32 11 j. That group policies may contain limitations or caps in  
32 12 the conversion rights, additional premiums may have to be paid  
32 13 if the policy is converted, the name of the party responsible  
32 14 for the payment of the additional premiums, and, if a group  
32 15 policy is terminated and replaced by another group policy,  
32 16 that there may be no right to convert the original coverage.

32 17 k. The risks associated with policy contestability  
32 18 including but not limited to the risk that the viatical  
32 19 settlement purchaser will have no claim or only a partial  
32 20 claim to death benefits should the insurer rescind the policy  
32 21 within the contestability period.

32 22 1. Whether the viatical settlement purchaser will be the  
32 23 owner of the policy in addition to being the beneficiary, and  
32 24 if the viatical settlement purchaser is the beneficiary only  
32 25 and not also the owner, the special risks associated with that  
32 26 status, including but not limited to the risk that the  
32 27 beneficiary may be changed or the premium may not be paid.

32 28 m. The experience and qualifications of the person who  
32 29 determines the life expectancy of the insured, including  
32 30 in-house staff, independent physicians, and specialty firms  
32 31 that weigh medical and actuarial data; the information this  
32 32 projection is based on; and the relationship of the projection  
32 33 maker to the viatical settlement provider, if any.

32 34 n. A brochure describing the process of investment in  
32 35 viatical settlements. The national association of insurance  
33 1 commissioners form for the brochure shall be used unless  
33 2 another form is developed and approved by the commissioner.

33 3 6. A viatical settlement provider shall provide the  
33 4 viatical settlement purchaser with at least the following  
33 5 disclosures no later than at the time of the assignment,  
33 6 transfer, or sale of all or a portion of an insurance policy.  
33 7 The disclosures shall be contained in a document signed by the  
33 8 viatical settlement purchaser and viatical settlement  
33 9 provider, and shall make all of the following disclosures to  
33 10 the viatical settlement purchaser:

33 11 a. All the life expectancy certifications obtained by the  
33 12 provider in the process of determining the price paid to the  
33 13 viator.

33 14 b. Whether premium payments or other costs related to the  
33 15 policy have been escrowed. If escrowed, state the date upon  
33 16 which the escrowed funds will be depleted and whether the  
33 17 viatical settlement purchaser will be responsible for payment  
33 18 of premiums thereafter and, if so, the amount of the premiums.

33 19 c. Whether premium payments or other costs related to the  
33 20 policy have been waived. If waived, disclose whether the  
33 21 investor will be responsible for payment of the premiums if  
33 22 the insurer that wrote the policy terminates the waiver after  
33 23 purchase and the amount of those premiums.

33 24 d. The type of policy offered or sold, i.e., whole life,  
33 25 term life, universal life, or a group policy certificate, any  
33 26 additional benefits contained in the policy, and the current  
33 27 status of the policy.

33 28 e. If the policy is term insurance, the special risks  
33 29 associated with term insurance including but not limited to  
33 30 the viatical settlement purchaser's responsibility for  
33 31 additional premiums if the viator continues the term policy at  
33 32 the end of the current term.

33 33 f. Whether the policy is contestable.

33 34 g. Whether the insurer that wrote the policy has any  
33 35 additional rights that could negatively affect or extinguish  
34 1 the viatical settlement purchaser's rights under the viatical  
34 2 settlement contract, what these rights are, and under what  
34 3 conditions these rights are activated.

34 4 h. The name and address of the person responsible for  
34 5 monitoring the insured's condition. The viatical settlement  
34 6 provider shall describe how often the monitoring of the  
34 7 insured's condition is done, how the date of death is  
34 8 determined, and how and when this information will be  
34 9 transmitted to the viatical settlement purchaser.

34 10 Sec. 9. NEW SECTION. 508E.9 DISCLOSURE TO INSURER.

34 11 Prior to the initiation of a plan, transaction, or series  
34 12 of transactions, a viatical settlement broker, or viatical  
34 13 settlement provider, shall fully disclose to an insurer a  
34 14 plan, transaction, or series of transactions to which the  
34 15 viatical settlement broker or viatical settlement provider is  
34 16 a party to originate, renew, continue, or finance a life  
34 17 insurance policy with the insurer for the purpose of engaging  
34 18 in the business of viatical settlements at any time prior to,  
34 19 or during the first five years after, issuance of the policy.

34 20 Sec. 10. NEW SECTION. 508E.10 GENERAL RULES.

34 21 1. a. A viatical settlement provider entering into a  
34 22 viatical settlement contract shall first obtain all of the  
34 23 following:

34 24 (1) If the viator is the insured, a written statement from  
34 25 a licensed attending physician that the viator is of sound  
34 26 mind and under no constraint or undue influence to enter into  
34 27 a viatical settlement contract.

34 28 (2) A document in which the insured consents to the  
34 29 release of the insured's medical records to a licensed  
34 30 viatical settlement provider, viatical settlement broker, and  
34 31 the insurance company that issued the life insurance policy  
34 32 covering the life of the insured.

34 33 b. Within twenty days after a viator executes documents  
34 34 necessary to transfer any rights under an insurance policy or  
34 35 within twenty days of entering any agreement, option, promise,  
35 1 or any other form of understanding, expressed or implied, to  
35 2 viaticate the policy, the viatical settlement provider shall  
35 3 give written notice to the insurer that issued that insurance  
35 4 policy that the policy has or will become a viaticated policy.  
35 5 The notice shall be accompanied by the documents required by  
35 6 paragraph "c".

35 7 c. The viatical provider shall deliver a copy of the  
35 8 medical release required under paragraph "a", subparagraph  
35 9 (2), a copy of the viator's application for the viatical  
35 10 settlement contract, the notice required under paragraph "b",  
35 11 and a request for verification of coverage to the insurer that  
35 12 issued the life policy that is the subject of the viatical  
35 13 transaction. The national association of insurance  
35 14 commissioners form for verification of coverage shall be used  
35 15 unless another form is developed and approved by the  
35 16 commissioner.

35 17 d. The insurer shall respond to a request for verification  
35 18 of coverage submitted on an approved form by a viatical  
35 19 settlement provider or viatical settlement broker within  
35 20 thirty days of the date the request is received and shall  
35 21 indicate whether, based on the medical evidence and documents  
35 22 provided, the insurer intends to pursue an investigation at  
35 23 this time regarding the validity of the insurance contract or  
35 24 possible fraud. The insurer shall accept a request for  
35 25 verification of coverage made on a national association of  
35 26 insurance commissioners form or any other form developed and  
35 27 approved by the commissioner. The insurer shall accept an  
35 28 original, facsimile, or electronic copy of such request and  
35 29 any accompanying authorization signed by the viator. A  
35 30 failure by the insurer to meet its obligations under this  
35 31 subsection shall be a violation of sections 508E.11 and  
35 32 508E.16.

35 33 e. Prior to or at the time of execution of the viatical  
35 34 settlement contract, the viatical settlement provider shall  
35 35 obtain a witnessed document in which the viator consents to  
36 1 the viatical settlement contract, represents that the viator  
36 2 has a full and complete understanding of the viatical  
36 3 settlement contract, that the viator has a full and complete  
36 4 understanding of the benefits of the life insurance policy,  
36 5 acknowledges that the viator is entering into the viatical  
36 6 settlement contract freely and voluntarily, and, for persons  
36 7 with a terminal or chronic illness or condition, acknowledges  
36 8 that the insured has a terminal or chronic illness and that  
36 9 the terminal or chronic illness or condition was diagnosed  
36 10 after the life insurance policy was issued.

36 11 f. If a viatical settlement broker performs any of these  
36 12 activities required of the viatical settlement provider, the  
36 13 viatical settlement provider is deemed to have fulfilled the  
36 14 requirements of this section.

36 15 2. All medical information solicited or obtained by any  
36 16 licensee shall be subject to the applicable provisions of  
36 17 state law relating to confidentiality of medical information,  
36 18 including section 505.8.

36 19 3. All viatical settlement contracts entered into in this  
36 20 state shall provide the viator with an absolute right to  
36 21 rescind the contract before the earlier of sixty days after  
36 22 the date upon which the viatical settlement contract is  
36 23 executed by all parties or thirty days after the viatical  
36 24 settlement proceeds have been sent to the viator as provided  
36 25 in section 508E.10, subsection 4. Recision by the viator may  
36 26 be conditioned upon the viator both giving notice and repaying  
36 27 to the viatical settlement provider within the recision period  
36 28 all viatical settlement proceeds, and any premiums, loans, and  
36 29 loan interest paid by or on behalf of the viatical settlement  
36 30 provider in connection with or as a consequence of the  
36 31 viatical settlement. If the insured dies during the recision  
36 32 period, the viatical settlement contract shall be deemed to  
36 33 have been rescinded, subject to repayment to the viatical  
36 34 settlement provider or purchaser of all viatical settlement  
36 35 proceeds, and any premiums, loans, and loan interest that have  
37 1 been paid by the viatical settlement provider or purchaser,  
37 2 which shall be paid within sixty days of the death of the  
37 3 insured. In the event of any recision, if the viatical  
37 4 settlement provider has paid commissions or other compensation  
37 5 to a viatical settlement broker in connection with the  
37 6 rescinded transaction, the viatical settlement broker shall  
37 7 refund all such commissions and compensation to the viatical  
37 8 settlement provider within five business days following



37 9 receipt of written demand from the viatical settlement  
37 10 provider, which demand shall be accompanied by either the  
37 11 viator's notice of rescission if rescinded at the election of  
37 12 the viator, or a notice of the death of the insured if  
37 13 rescinded by reason of the death of the insured within the  
37 14 applicable rescission period.

37 15 4. The viatical settlement provider shall instruct the  
37 16 viator to send the executed documents required to effect the  
37 17 change in ownership, assignment, or change in beneficiary  
37 18 directly to the independent escrow agent. Within three  
37 19 business days after the date the escrow agent receives the  
37 20 document, or from the date the viatical settlement provider  
37 21 receives the documents, if the viator erroneously provides the  
37 22 documents directly to the viatical settlement provider, the  
37 23 viatical settlement provider shall pay or transfer the  
37 24 viatical settlement proceeds into an escrow or trust account  
37 25 maintained in a state or federally chartered financial  
37 26 institution whose deposits are insured by the federal deposit  
37 27 insurance corporation. Upon payment of the viatical  
37 28 settlement proceeds into the escrow account, the escrow agent  
37 29 shall deliver the original change in ownership, assignment, or  
37 30 change in beneficiary forms to the viatical settlement  
37 31 provider or related provider trust, or other designated  
37 32 representative of the viatical settlement provider. Upon the  
37 33 escrow agent's receipt of the acknowledgment of the properly  
37 34 completed transfer of ownership, assignment, or designation of  
37 35 beneficiary from the insurance company, the escrow agent shall  
38 1 pay the viatical settlement proceeds to the viator.

38 2 5. A failure to tender consideration to the viator for the  
38 3 viatical settlement contract within the time set forth in the  
38 4 disclosure pursuant to section 508E.8, subsection 1, paragraph  
38 5 "g", renders the viatical settlement contract voidable by the  
38 6 viator for lack of consideration until the time consideration  
38 7 is tendered to and accepted by the viator. Funds shall be  
38 8 deemed sent by a viatical settlement provider to a viator as  
38 9 of the date that the escrow agent either releases funds for  
38 10 wire transfer to the viator or places a check for delivery to  
38 11 the viator via the United States postal service or other  
38 12 nationally recognized delivery service.

38 13 6. A contact with the insured for the purpose of  
38 14 determining the health status of the insured by the viatical  
38 15 settlement provider or viatical settlement broker after the  
38 16 viatical settlement has occurred shall only be made by the  
38 17 viatical settlement provider or viatical settlement broker  
38 18 licensed pursuant to section 508E.3 or its authorized  
38 19 representatives and shall be limited to once every three  
38 20 months for insureds with a life expectancy of more than one  
38 21 year, and to no more than once per month for insureds with a  
38 22 life expectancy of one year or less. The viatical settlement  
38 23 provider or viatical settlement broker shall explain the  
38 24 procedure for these contacts at the time the viatical  
38 25 settlement contract is entered into. The limitations set  
38 26 forth in this subsection shall not apply to any contact with  
38 27 an insured for reasons other than determining the insured's  
38 28 health status. A viatical settlement provider and a viatical  
38 29 settlement broker shall be responsible for the actions of  
38 30 their authorized representatives.

38 31 Sec. 11. NEW SECTION. 508E.11 PROHIBITED PRACTICES.

38 32 1. It is a violation of this chapter for any person to  
38 33 enter into a viatical settlement contract at any time prior to  
38 34 the application or issuance of a policy which is the subject  
38 35 of a viatical settlement contract or within a five-year period  
39 1 commencing with the date of issuance of the insurance policy  
39 2 or certificate unless the viator certifies to the viatical  
39 3 settlement provider that one or more of the following  
39 4 conditions have been met within the five-year period:

39 5 a. The policy was issued upon the viator's exercise of  
39 6 conversion rights arising out of a group or individual policy,  
39 7 provided the total of the time covered under the conversion  
39 8 policy plus the time covered under the prior policy is at  
39 9 least sixty months. The time covered under a group policy  
39 10 shall be calculated without regard to any change in insurance  
39 11 carriers, provided the coverage has been continuous and under  
39 12 the same group sponsorship.

39 13 b. The viator submits independent evidence to the viatical  
39 14 settlement provider that one or more of the following  
39 15 conditions have been met within the five-year period:

- 39 16 (1) The viator or insured is terminally or chronically  
39 17 ill.  
39 18 (2) The viator's spouse dies.  
39 19 (3) The viator divorces the viator's spouse.

39 20 (4) The viator retires from full-time employment.  
39 21 (5) The viator becomes physically or mentally disabled and  
39 22 a physician determines that the disability prevents the viator  
39 23 from maintaining full-time employment.  
39 24 (6) A final order, judgment, or decree is entered by a  
39 25 court of competent jurisdiction, on the application of a  
39 26 creditor of the viator, adjudicating the viator bankrupt or  
39 27 insolvent, or approving a petition seeking reorganization of  
39 28 the viator or appointing a receiver, trustee, or liquidator to  
39 29 all or a substantial part of the viator's assets.

39 30 c. The viator enters into a viatical settlement contract  
39 31 more than two years after the date of issuance of a policy  
39 32 and, with respect to the policy, at all times prior to the  
39 33 date that is two years after policy issuance, all of the  
39 34 following conditions are met:

39 35 (1) Policy premiums have been funded exclusively with  
40 1 unencumbered assets, including an interest in the life  
40 2 insurance policy being financed only to the extent of its net  
40 3 cash surrender value, provided by, or fully recourse liability  
40 4 incurred by, the insured or a person described in section  
40 5 508E.2, subsection 14, paragraph "c", subparagraph (3).

40 6 (2) There is no agreement or understanding with any other  
40 7 person to guarantee any such liability or to purchase, or  
40 8 stand ready to purchase, the policy, including through an  
40 9 assumption or forgiveness of the loan.

40 10 (3) Neither the insured nor the policy has been evaluated  
40 11 for settlement.

40 12 2. Copies of the independent evidence described in  
40 13 subsection 1, paragraph "b", and documents required by section  
40 14 508E.10, subsection 1, shall be submitted to the insurer when  
40 15 the viatical settlement provider or other party entering into  
40 16 a viatical settlement contract with a viator submits a request  
40 17 to the insurer for verification of coverage. The copies shall  
40 18 be accompanied by a letter of attestation from the viatical  
40 19 settlement provider that the copies are true and correct  
40 20 copies of the documents received by the viatical settlement  
40 21 provider.

40 22 3. If the viatical settlement provider submits to the  
40 23 insurer a copy of the owner's or insured's certification  
40 24 described in and the independent evidence required by  
40 25 subsection 1, paragraph "b" when the provider submits a  
40 26 request to the insurer to effect the transfer of the policy or  
40 27 certificate to the viatical settlement provider, the copy  
40 28 shall be deemed to conclusively establish that the viatical  
40 29 settlement contract satisfies the requirements of this section  
40 30 and the insurer shall timely respond to the request.

40 31 4. An insurer shall not, as a condition of responding to a  
40 32 request for verification of coverage or effecting the transfer  
40 33 of a policy pursuant to a viatical settlement contract,  
40 34 require that the viator, insured, viatical settlement  
40 35 provider, or viatical settlement broker sign any form,  
41 1 disclosure, consent, or waiver form that has not been  
41 2 expressly approved by the commissioner for use in connection  
41 3 with viatical settlement contracts in this state.

41 4 5. Upon receipt of a properly completed request for change  
41 5 of ownership or beneficiary of a policy, the insurer shall  
41 6 respond in writing within thirty days with written  
41 7 acknowledgment confirming that the change has been effected or  
41 8 specifying the reasons why the requested change cannot be  
41 9 processed. The insurer shall not unreasonably delay effecting  
41 10 a change of ownership or beneficiary and shall not otherwise  
41 11 seek to interfere with any viatical settlement contract  
41 12 lawfully entered into in this state.

41 13 Sec. 12. NEW SECTION. 508E.12 PROHIBITED PRACTICES AND  
41 14 CONFLICTS OF INTEREST.

41 15 1. With respect to any viatical settlement contract or  
41 16 insurance policy, a viatical settlement broker shall not  
41 17 knowingly solicit an offer from, effectuate a viatical  
41 18 settlement with, or make a sale to any viatical settlement  
41 19 provider, viatical settlement purchaser, financing entity, or  
41 20 related provider trust that is controlling, controlled by, or  
41 21 under common control with such viatical settlement broker.

41 22 2. With respect to any viatical settlement contract or  
41 23 insurance policy, a viatical settlement provider shall not  
41 24 knowingly enter into a viatical settlement contract with a  
41 25 viator, if, in connection with such viatical settlement  
41 26 contract, anything of value will be paid to a viatical  
41 27 settlement broker that is controlling, controlled by, or under  
41 28 common control with such viatical settlement provider or the  
41 29 viatical settlement purchaser, financing entity, or related  
41 30 provider trust that is involved in such viatical settlement

41 31 contract.

41 32 3. A violation of subsection 1 or 2 shall be deemed a  
41 33 fraudulent viatical settlement act.

41 34 4. No viatical settlement provider shall enter into a  
41 35 viatical settlement contract unless the viatical settlement  
42 1 promotional, advertising, and marketing materials, as may be  
42 2 prescribed by rules adopted by the commissioner, have been  
42 3 filed with the commissioner. In no event shall any marketing  
42 4 materials expressly reference that the insurance is free for  
42 5 any period of time. The inclusion of any reference in the  
42 6 marketing materials that would cause a viator to reasonably  
42 7 believe that the insurance is free for any period of time  
42 8 shall be considered a violation of this chapter.

42 9 5. No life insurance producer, insurance company, viatical  
42 10 settlement broker, or viatical settlement provider shall make  
42 11 any statement or representation to the applicant or  
42 12 policyholder in connection with the sale or financing of a  
42 13 life insurance policy to the effect that the insurance is free  
42 14 or without cost to the policyholder for any period of time  
42 15 unless provided in the policy.

42 16 Sec. 13. NEW SECTION. 508E.13 ADVERTISING FOR VIATICAL  
42 17 SETTLEMENTS.

42 18 The purpose of this section is to provide prospective  
42 19 viators with clear and unambiguous statements in the  
42 20 advertisement of viatical settlements and to assure the clear,  
42 21 truthful, and adequate disclosure of the benefits, risks,  
42 22 limitations, and exclusions of any viatical settlement  
42 23 contract. This purpose is intended to be accomplished by  
42 24 rules adopted by the commissioner for the establishment of  
42 25 guidelines and standards of permissible and impermissible  
42 26 conduct in the advertising of viatical settlements to assure  
42 27 that product descriptions are presented in a manner that  
42 28 prevents unfair, deceptive, or misleading advertising, and is  
42 29 conducive to accurate presentation and description of viatical  
42 30 settlements through the advertising media and materials used  
42 31 by viatical settlement licensees.

42 32 1. This section shall apply to any advertising of viatical  
42 33 settlement contracts or related products or services intended  
42 34 for dissemination in this state, including internet  
42 35 advertising viewed by persons located in this state. Where  
43 1 disclosure requirements are established pursuant to federal  
43 2 regulation, this section shall be interpreted so as to  
43 3 minimize or eliminate conflict with federal regulation  
43 4 wherever possible.

43 5 2. Every viatical settlement licensee shall establish and  
43 6 at all times maintain a system of control over the content,  
43 7 form, and method of dissemination of all advertisements of its  
43 8 contracts, products, and services. All advertisements,  
43 9 regardless of by whom written, created, designed, or  
43 10 presented, shall be the responsibility of the viatical  
43 11 settlement licensees, as well as the individual who created or  
43 12 presented the advertisement. A system of control shall  
43 13 include regular, routine notification, at least once a year,  
43 14 to agents and others authorized by the viatical settlement  
43 15 licensee who disseminate advertisements of the requirements  
43 16 and procedures for approval prior to the use of any  
43 17 advertisements not furnished by the viatical settlement  
43 18 licensee.

43 19 3. An advertisement shall be truthful and not misleading  
43 20 in fact or by implication. The form and content of an  
43 21 advertisement of a viatical settlement contract shall be  
43 22 sufficiently complete and clear so as to avoid deception. It  
43 23 shall not have the capacity or tendency to mislead or deceive.  
43 24 Whether an advertisement has the capacity or tendency to  
43 25 mislead or deceive shall be determined by the commissioner  
43 26 from the overall impression that the advertisement may be  
43 27 reasonably expected to create upon a person of average  
43 28 education or intelligence within the segment of the public to  
43 29 which it is directed.

43 30 4. The information required to be disclosed under this  
43 31 section shall not be minimized, rendered obscure, or presented  
43 32 in an ambiguous fashion or intermingled with the text of the  
43 33 advertisement so as to be confusing or misleading.

43 34 a. An advertisement shall not omit material information or  
43 35 use words, phrases, statements, references, or illustrations  
44 1 if the omission or use has the capacity, tendency, or effect  
44 2 of misleading or deceiving viators as to the nature or extent  
44 3 of any benefit, loss covered, premium payable, or state or  
44 4 federal tax consequence. The fact that the viatical  
44 5 settlement contract offered is made available for inspection  
44 6 prior to consummation of the sale, or an offer is made to

44 7 refund the payment if the viator is not satisfied or that the  
44 8 viatical settlement contract includes a free-look period that  
44 9 satisfies or exceeds legal requirements, does not remedy a  
44 10 misleading statement.

44 11 b. An advertisement shall not use the name or title of a  
44 12 life insurance company or a life insurance policy unless the  
44 13 advertisement has been approved by the insurer.

44 14 c. An advertisement shall not state or imply that interest  
44 15 charged on an accelerated death benefit or a policy loan is  
44 16 unfair, inequitable, or in any manner an incorrect or improper  
44 17 practice.

44 18 d. The words "free", "no cost", "without cost", "no  
44 19 additional cost", "at no extra cost", or words of similar  
44 20 import shall not be used with respect to any benefit or  
44 21 service unless true. An advertisement may specify the charge  
44 22 for a benefit or a service or may state that a charge is  
44 23 included in the payment or use other appropriate language.

44 24 e. Testimonials, appraisals, analyses, or endorsements  
44 25 used in advertisements must be genuine; represent the current  
44 26 opinion of the author; be applicable to the viatical  
44 27 settlement contract product or service advertised, if any; and  
44 28 be accurately reproduced with sufficient completeness to avoid  
44 29 misleading or deceiving prospective viators as to the nature  
44 30 or scope of the testimonials, appraisal, analysis, or  
44 31 endorsement. In using a testimonial, appraisal, analysis, or  
44 32 endorsement, a licensee under this chapter makes as its own  
44 33 all the statements contained therein, and the statements are  
44 34 subject to all of the provisions of this section.

44 35 (1) If the individual making a testimonial, appraisal,  
45 1 analysis, or an endorsement has a financial interest in the  
45 2 party making use of the testimonial, appraisal, analysis, or  
45 3 endorsement, either directly or through a related entity as a  
45 4 stockholder, director, officer, employee, or otherwise, or  
45 5 receives any benefit directly or indirectly other than  
45 6 required union scale wages, that fact shall be prominently  
45 7 disclosed in the advertisement.

45 8 (2) An advertisement shall not state or imply that a  
45 9 viatical settlement contract benefit or product or service has  
45 10 been approved or endorsed by a group of individuals, society,  
45 11 association, or other organization unless that is the fact and  
45 12 unless any relationship between an organization and the  
45 13 viatical settlement licensee is disclosed. If the entity  
45 14 making the endorsement or testimonial is owned, controlled, or  
45 15 managed by the viatical settlement licensee, or receives any  
45 16 payment or other consideration from the viatical settlement  
45 17 licensee for making an endorsement or testimonial, that fact  
45 18 shall be disclosed in the advertisement.

45 19 (3) When an endorsement refers to benefits received under  
45 20 a viatical settlement contract, all pertinent information  
45 21 shall be retained by the viatical settlement licensee for a  
45 22 period of five years after its use.

45 23 5. An advertisement shall not contain statistical  
45 24 information unless it accurately reflects recent and relevant  
45 25 facts. The source of all statistics used in an advertisement  
45 26 shall be identified.

45 27 6. An advertisement shall not disparage an insurer,  
45 28 viatical settlement provider, viatical settlement broker,  
45 29 insurance producer, policy, services, or methods of marketing.

45 30 7. The name of the viatical settlement licensee shall be  
45 31 clearly identified in all advertisements about the viatical  
45 32 settlement licensee or its viatical settlement contract,  
45 33 products, or services, and if any specific viatical settlement  
45 34 contract is advertised, the viatical settlement contract shall  
45 35 be identified either by form number or some other appropriate  
46 1 description. If an application is part of the advertisement,  
46 2 the name of the viatical settlement provider shall be shown on  
46 3 the application.

46 4 8. An advertisement shall not use a trade name, group  
46 5 designation, name of the parent company of a viatical  
46 6 settlement licensee, name of a particular division of the  
46 7 viatical settlement licensee, service mark, slogan, symbol or  
46 8 other device, or reference without disclosing the name of the  
46 9 viatical settlement licensee, if the advertisement would have  
46 10 the capacity or tendency to mislead or deceive as to the true  
46 11 identity of the viatical settlement licensee, or to create the  
46 12 impression that a company other than the viatical settlement  
46 13 licensee would have any responsibility for the financial  
46 14 obligation under a viatical settlement contract.

46 15 9. An advertisement shall not use any combination of  
46 16 words, symbols, or physical materials that by their content,  
46 17 phraseology, shape, color, or other characteristics are so

46 18 similar to a combination of words, symbols, or physical  
46 19 materials used by a government program or agency or otherwise  
46 20 appear to be of such a nature that they tend to mislead  
46 21 prospective viators into believing that the solicitation is in  
46 22 some manner connected with a government program or agency.  
46 23 10. An advertisement may state that a viatical settlement  
46 24 licensee is licensed in the state where the advertisement  
46 25 appears, provided it does not exaggerate that fact or suggest  
46 26 or imply that a competing viatical settlement licensee may not  
46 27 be so licensed. The advertisement may ask the audience to  
46 28 consult the viatical settlement licensee's internet site or  
46 29 contact the commissioner to find out if the state requires  
46 30 licensing and, if so, whether the viatical settlement provider  
46 31 or viatical settlement broker is licensed.

46 32 11. An advertisement shall not create the impression that  
46 33 the viatical settlement provider, its financial condition or  
46 34 status, the payment of its claims or the merits, desirability,  
46 35 or advisability of its viatical settlement contracts are  
47 1 recommended or endorsed by any government entity.

47 2 12. The name of the actual viatical settlement licensee  
47 3 shall be stated in each of its advertisements. An  
47 4 advertisement shall not use a trade name, any group  
47 5 designation, name of any affiliate, or controlling entity of  
47 6 the viatical settlement licensee, service mark, slogan,  
47 7 symbol, or other device in a manner that would have the  
47 8 capacity or tendency to mislead or deceive as to the true  
47 9 identity of the actual viatical settlement licensee or create  
47 10 the false impression that an affiliate or controlling entity  
47 11 would have any responsibility for the financial obligation of  
47 12 the viatical settlement licensee.

47 13 13. An advertisement shall not directly or indirectly  
47 14 create the impression that any division or agency of the state  
47 15 or of the United States government endorses, approves, or  
47 16 favors any of the following:

47 17 a. A viatical settlement licensee or its business  
47 18 practices or methods of operation.

47 19 b. The merits, desirability, or advisability of any  
47 20 viatical settlement contract.

47 21 c. Any viatical settlement contract.

47 22 d. Any life insurance policy or life insurance company.

47 23 14. If the advertiser emphasizes the speed with which the  
47 24 viatication will occur, the advertising must disclose the  
47 25 average time frame from completed application to the date of  
47 26 offer and from acceptance of the offer to receipt of the funds  
47 27 by the viator.

47 28 15. If the advertising emphasizes the dollar amounts  
47 29 available to viators, the advertising shall disclose the  
47 30 average purchase price as a percent of face value obtained by  
47 31 viators contracting with the licensee during the past six  
47 32 months.

47 33 Sec. 14. NEW SECTION. 508E.14 FRAUD PREVENTION AND  
47 34 CONTROL

47 35 1. FRAUDULENT VIATICAL SETTLEMENT ACTS == INTERFERENCE AND  
48 1 PARTICIPATION OF CONVICTED FELONS PROHIBITED.

48 2 a. A person shall not commit a fraudulent viatical  
48 3 settlement act.

48 4 b. A person shall not knowingly or intentionally interfere  
48 5 with the enforcement of the provisions of this chapter or  
48 6 investigations of suspected or actual violations of this  
48 7 chapter.

48 8 c. A person in the business of viatical settlements shall  
48 9 not knowingly or intentionally permit any person convicted of  
48 10 a felony involving dishonesty or breach of trust to  
48 11 participate in the business of viatical settlements.

48 12 2. FRAUD WARNING REQUIRED.

48 13 a. A viatical settlements contract and application for a  
48 14 viatical settlement, regardless of the form of transmission,  
48 15 shall contain the following statement or a substantially  
48 16 similar statement:

48 17 "Any person who knowingly presents false information in an  
48 18 application for insurance or viatical settlement contract is  
48 19 guilty of a crime and may be subject to fines and confinement  
48 20 in prison."

48 21 b. The lack of a statement as required in paragraph "a"  
48 22 does not constitute a defense in any prosecution for a  
48 23 fraudulent viatical settlement act.

48 24 3. MANDATORY REPORTING OF FRAUDULENT VIATICAL SETTLEMENT  
48 25 ACTS.

48 26 a. Any person engaged in the business of viatical  
48 27 settlements having knowledge or a reasonable suspicion that a  
48 28 fraudulent viatical settlement act is being, will be, or has

48 29 been committed shall provide to the commissioner such  
48 30 information as required by and in a manner prescribed by rules  
48 31 adopted by the commissioner.  
48 32 b. Any other person having knowledge or a reasonable  
48 33 belief that a fraudulent viatical settlement act is being,  
48 34 will be, or has been committed may provide to the commissioner  
48 35 the information required by and in a manner prescribed by  
49 1 rules adopted by the commissioner.

49 2 4. IMMUNITY FROM LIABILITY.

49 3 a. No civil liability shall be imposed on and no cause of  
49 4 action shall arise from a person's furnishing information  
49 5 concerning suspected, anticipated, or completed fraudulent  
49 6 viatical settlement acts or suspected or completed fraudulent  
49 7 insurance acts, if the information is provided to or received  
49 8 from any of the following:

49 9 (1) The commissioner or the commissioner's employees,  
49 10 agents, or representatives.

49 11 (2) A federal, state, or local law enforcement or  
49 12 regulatory official or the official's employees, agents, or  
49 13 representatives.

49 14 (3) A person involved in the prevention and detection of  
49 15 fraudulent viatical settlement acts or that person's agents,  
49 16 employees, or representatives.

49 17 (4) The national association of insurance commissioners;  
49 18 the national association of securities dealers; the north  
49 19 American securities administrators association; their  
49 20 employees, agents, or representatives; or other regulatory  
49 21 body overseeing life insurance, viatical settlements,  
49 22 securities, or investment fraud.

49 23 (5) A life insurer that issued the life insurance policy  
49 24 covering the life of the insured.

49 25 b. Paragraph "a" does not apply to a statement made with  
49 26 actual malice. In an action brought against a person for  
49 27 filing a report or furnishing other information concerning a  
49 28 fraudulent viatical settlement act, the party bringing the  
49 29 action shall plead specifically any allegation that paragraph  
49 30 "a" does not apply because the person filing the report or  
49 31 furnishing the information did so with actual malice.

49 32 c. A person furnishing information as identified in  
49 33 paragraph "a" shall be entitled to an award of attorney fees  
49 34 and costs if the person is the prevailing party in a civil  
49 35 cause of action for libel, slander, or any other relevant tort  
50 1 arising out of an activity in carrying out the provisions of  
50 2 this chapter and the party bringing the action was not  
50 3 substantially justified in doing so. For purposes of this  
50 4 paragraph, a proceeding is substantially justified if it had a  
50 5 reasonable basis in law or fact at the time that it was  
50 6 initiated. However, such an award does not apply to any  
50 7 person furnishing information concerning the person's own  
50 8 fraudulent viatical settlement act.

50 9 d. This section does not abrogate or modify a common law  
50 10 or statutory privilege or immunity enjoyed by a person  
50 11 described in paragraph "a".

50 12 5. CONFIDENTIALITY.

50 13 a. A document or evidence provided pursuant to subsection  
50 14 4 or obtained by the commissioner in an investigation of a  
50 15 suspected or actual fraudulent viatical settlement act shall  
50 16 be privileged and confidential, notwithstanding chapter 22,  
50 17 shall not be a public record, and shall not be subject to  
50 18 discovery or subpoena in a civil or criminal action.

50 19 b. Paragraph "a" does not prohibit the release by the  
50 20 commissioner of a document or evidence obtained in an  
50 21 investigation of a suspected or actual fraudulent viatical  
50 22 settlement act if any of the following applies:

50 23 (1) In an administrative or judicial proceeding to enforce  
50 24 laws administered by the commissioner.

50 25 (2) To a federal, state, or local law enforcement or  
50 26 regulatory agency, to an organization established for the  
50 27 purpose of detecting and preventing fraudulent viatical  
50 28 settlement acts, or to the national association of insurance  
50 29 commissioners.

50 30 (3) At the discretion of the commissioner, to a person in  
50 31 the business of viatical settlements that is aggrieved by a  
50 32 fraudulent viatical settlement act.

50 33 c. Release of a document or evidence under paragraph "b"  
50 34 does not abrogate or modify the privilege granted in paragraph  
50 35 "a".

51 1 6. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This  
51 2 chapter shall not do any of the following:

51 3 a. Preempt the authority or relieve the duty of other law  
51 4 enforcement or regulatory agencies to investigate, examine,

51 5 and prosecute suspected violations of law.  
51 6 b. Prevent or prohibit a person from disclosing  
51 7 voluntarily information concerning viatical settlement fraud  
51 8 to a law enforcement or regulatory agency other than the  
51 9 commissioner.  
51 10 c. Limit the powers granted elsewhere by the laws of this  
51 11 state to the commissioner or an insurance fraud unit to  
51 12 investigate and examine possible violations of law and to take  
51 13 appropriate action against wrongdoers.  
51 14 7. VIATICAL SETTLEMENT ANTIFRAUD INITIATIVES.  
51 15 a. A viatical settlement provider or viatical settlement  
51 16 broker shall have in place antifraud initiatives reasonably  
51 17 calculated to detect, prosecute, and prevent fraudulent  
51 18 viatical settlement acts. At the discretion of the  
51 19 commissioner, the commissioner may order, or a licensee may  
51 20 request and the commissioner may grant, such modifications of  
51 21 the following required initiatives as necessary to ensure an  
51 22 effective antifraud program. The modifications may be more or  
51 23 less restrictive than the required initiatives so long as the  
51 24 modifications may reasonably be expected to accomplish the  
51 25 purpose of this section.  
51 26 b. Antifraud initiatives shall include all of the  
51 27 following:  
51 28 (1) A fraud investigator, who may be a viatical settlement  
51 29 provider, viatical settlement broker, a viatical settlement  
51 30 provider's or viatical settlement broker's employee, or an  
51 31 independent contractor.  
51 32 (2) An antifraud plan, which shall be submitted to the  
51 33 commissioner. The antifraud plan shall include, but is not  
51 34 limited to all of the following:  
51 35 (a) A description of the procedures for detecting and  
52 1 investigating possible fraudulent viatical settlement acts and  
52 2 procedures for resolving material inconsistencies between  
52 3 medical records and insurance applications.  
52 4 (b) A description of the procedures for reporting possible  
52 5 fraudulent viatical settlement acts to the commissioner.  
52 6 (c) A description of the plan for antifraud education and  
52 7 training of underwriters and other personnel.  
52 8 (d) A description or chart outlining the organizational  
52 9 arrangement of the antifraud personnel who are responsible for  
52 10 the investigation and reporting of possible fraudulent  
52 11 viatical settlement acts and investigating unresolved material  
52 12 inconsistencies between medical records and insurance  
52 13 applications.  
52 14 c. An antifraud plan submitted to the commissioner shall  
52 15 be privileged and confidential, notwithstanding chapter 22,  
52 16 shall not be a public record, and shall not be subject to  
52 17 discovery or subpoena in a civil or criminal action.  
52 18 Sec. 15. NEW SECTION. 508E.15 INJUNCTIONS == CIVIL  
52 19 REMEDIES == CEASE AND DESIST ORDERS == CIVIL PENALTY.  
52 20 1. In addition to the penalties and other enforcement  
52 21 provisions of this chapter, if any person violates this  
52 22 chapter or any rule implementing this chapter, the  
52 23 commissioner may seek an injunction in a court of competent  
52 24 jurisdiction and may apply for a temporary or permanent order  
52 25 that the commissioner determines is necessary to restrain the  
52 26 person from committing the violation.  
52 27 2. A person damaged by the act of a person in violation of  
52 28 this chapter may bring a civil action against the person  
52 29 committing the violation in a court of competent jurisdiction.  
52 30 3. The commissioner may issue, in accordance with chapter  
52 31 17A, a cease and desist order upon a person that violates any  
52 32 provision of this chapter, any rule or order adopted by the  
52 33 commissioner, or any written agreement entered into with the  
52 34 commissioner.  
52 35 4. When the commissioner finds that an activity in  
53 1 violation of this chapter presents an immediate danger to the  
53 2 health, safety, or welfare of the public requiring immediate  
53 3 agency action, the commissioner may proceed under section  
53 4 17A.18A.  
53 5 5. In addition to the penalties and other enforcement  
53 6 provisions of this chapter, any person who violates this  
53 7 chapter is subject to a civil penalty of up to five thousand  
53 8 dollars for each violation of this chapter. The civil penalty  
53 9 shall be deposited into the general fund of the state. If a  
53 10 person has not been ordered to pay restitution by a court, the  
53 11 commissioner's order may require a person found to be in  
53 12 violation of this chapter to make restitution to a person  
53 13 aggrieved by a violation of this chapter.  
53 14 6. Except for a fraudulent viatical settlement act  
53 15 committed by a viator, the enforcement provisions and

53 16 penalties of this section shall not apply to a viator.  
 53 17 Sec. 16. NEW SECTION. 508E.16 UNFAIR TRADE PRACTICES.  
 53 18 A violation of this chapter, including the commission of a  
 53 19 fraudulent viatical settlement act, is an unfair trade  
 53 20 practice under chapter 507B and a person convicted of the  
 53 21 violation is subject to the penalties contained in that  
 53 22 chapter.  
 53 23 Sec. 17. NEW SECTION. 508E.17 AUTHORITY TO PROMULGATE  
 53 24 REGULATIONS.  
 53 25 The commissioner shall have the authority to do all of the  
 53 26 following:  
 53 27 1. Adopt rules implementing and administering this  
 53 28 chapter.  
 53 29 2. Establish standards for evaluating reasonableness of  
 53 30 payments under viatical settlement contracts for persons who  
 53 31 are terminally or chronically ill. This authority includes  
 53 32 but is not limited to regulation of discount rates used to  
 53 33 determine the amount paid in exchange for assignment,  
 53 34 transfer, sale, devise, or bequest of a benefit under a life  
 53 35 insurance policy insuring the life of a person who is  
 54 1 chronically or terminally ill.  
 54 2 3. Establish appropriate licensing requirements, fees, and  
 54 3 standards for continued licensure for viatical settlement  
 54 4 providers and brokers.  
 54 5 4. Require a bond or other mechanism for financial  
 54 6 accountability for viatical settlement providers and viatical  
 54 7 settlement brokers.  
 54 8 5. Adopt rules governing the relationship and  
 54 9 responsibilities of both insurers and viatical settlement  
 54 10 providers and viatical settlement brokers during the  
 54 11 viatication of a life insurance policy or certificate.  
 54 12 Sec. 18. Section 507B.3, subsection 1, Code 2007, is  
 54 13 amended to read as follows:  
 54 14 1. A person shall not engage in this state in any trade  
 54 15 practice which is defined in this chapter as, or determined  
 54 16 pursuant to section 507B.6 to be, an unfair method of  
 54 17 competition, or an unfair or deceptive act or practice in the  
 54 18 business of insurance.  
 54 19 a. A person who violates a provision in chapter 508E shall  
 54 20 be guilty of committing a violation of this chapter.  
 54 21 b. The issuance of a qualified charitable gift annuity as  
 54 22 provided in chapter 508F does not constitute a trade practice  
 54 23 in violation of this chapter.  
 54 24 Sec. 19. CODIFICATION.  
 54 25 1. The Code editor shall codify section 508E.1 as section  
 54 26 508E.1A.  
 54 27 2. The Code editor shall codify section 508E.1A, as  
 54 28 enacted in this Act, as section 508E.1.  
 54 29 Sec. 20. Section 508E.3A, Code 2007, is repealed.  
 54 30 EXPLANATION  
 54 31 This bill provides for the regulation of viatical  
 54 32 settlements by the commissioner of insurance (commissioner).  
 54 33 A viatical settlement is a transaction involving the sale of a  
 54 34 life insurance policy (policy) issued by a life insurance  
 54 35 company (insurer) before the policy matures. A viatical  
 55 1 settlement may involve a number of parties including the  
 55 2 "viator", "viatical settlement broker", "viatical settlement  
 55 3 provider", and "insurer".  
 55 4 The viator is the policy owner who agrees to sell their  
 55 5 policy, presumably for less than its face value payable upon  
 55 6 death, to a viatical settlement provider either directly or  
 55 7 through a viatical settlement broker. The settlement is  
 55 8 governed by a "viatical settlement contract". The bill  
 55 9 contemplates that the viator may be chronically or terminally  
 55 10 ill.  
 55 11 Generally, the bill provides for a short title (Code  
 55 12 section 508E.1A), amends the Code chapter's current  
 55 13 definitional provisions (Code section 508E.2), eliminates  
 55 14 current provisions relating to the regulation of viatical  
 55 15 settlement contracts (Code section 508E.3), immunity from  
 55 16 liability for persons who provide information to the  
 55 17 commissioner (Code section 508E.3A), and authorization of the  
 55 18 commissioner to adopt rules to administer the Code chapter  
 55 19 (Code section 508E.4). The bill rewrites a number of these  
 55 20 provisions and includes additional regulations as follows:  
 55 21 CODE SECTION 508E.3 == LICENSE AND BOND REQUIREMENTS. The  
 55 22 bill requires a viatical settlement provider or viatical  
 55 23 settlement broker obtain a license by the commissioner or from  
 55 24 the commissioner of the viator's state of residence. The bill  
 55 25 provides for the issuance and renewal of licenses, the  
 55 26 disclosure of information relating to the applicant's



55 27 business, and the payment of license and renewal fees. It  
55 28 also requires the viatical settlement provider or viatical  
55 29 settlement broker provide evidence of financial responsibility  
55 30 to the commissioner (e.g., by posting a surety bond with the  
55 31 commissioner).

55 32 CODE SECTION 508E.4 == LICENSE REVOCATION AND DENIAL. The  
55 33 bill provides that the commissioner may refuse to issue,  
55 34 suspend, revoke, or refuse to renew the license of a viatical  
55 35 settlement provider or viatical settlement broker for cause,  
56 1 including misrepresentation or fraud, a violation of the  
56 2 bill's provisions, a failure to honor a contractual  
56 3 obligation, the use of an unfair or unreasonable practice, or  
56 4 the wrongful transfer of a policy.

56 5 CODE SECTION 508E.5 == APPROVAL OF VIATICAL SETTLEMENT  
56 6 CONTRACTS AND DISCLOSURE STATEMENTS. The bill requires a  
56 7 viatical settlement producer or viatical settlement broker to  
56 8 file with the commissioner forms used in their business. The  
56 9 commissioner must approve the documents which comply with the  
56 10 bill's requirements.

56 11 CODE SECTION 508E.6 == REPORTING REQUIREMENTS AND PRIVACY.  
56 12 The bill requires that a viatical settlement provider annually  
56 13 file an annual statement with the commissioner involving  
56 14 transactions conducted in this state. Certain information  
56 15 that could compromise the privacy of personal, financial, and  
56 16 health information of the viator is filed with the  
56 17 commissioner on a confidential basis.

56 18 CODE SECTION 508E.7 == EXAMINATION OR INVESTIGATIONS. The  
56 19 bill provides that the commissioner may conduct examinations  
56 20 of viatical settlement providers and viatical settlement  
56 21 brokers licensed under the bill's provisions. It provides for  
56 22 the authority, scope, and scheduling of examinations; requires  
56 23 licensees to retain business records; provides for the conduct  
56 24 of an examination; provides for the preparation of examination  
56 25 reports; provides for the confidentiality of examination  
56 26 information; prohibits a conflict of interest by an examiner;  
56 27 provides for the payment of costs associated with  
56 28 examinations; provides for immunity from liability; and  
56 29 provides investigatory authority to the commissioner.

56 30 CODE SECTION 508E.8 == DISCLOSURE TO VIATOR. The bill  
56 31 requires that a viatical settlement provider or viatical  
56 32 settlement broker disclose information regarding their  
56 33 business, their relationship with the viator and viatical  
56 34 settlement producer, and the transaction. The type of  
56 35 disclosure includes possible legal implications that could  
57 1 result from executing a viatical settlement contract (e.g.,  
57 2 tax consequences, claims of creditors, and proceeds from  
57 3 Medicaid or other government benefits); statutory rights  
57 4 granted under a viatical settlement contract (e.g., the right  
57 5 of rescission and when moneys must be paid to the viator); the  
57 6 terms and conditions of the transaction (e.g., the dollar  
57 7 amount of the current benefits payable to the viatical  
57 8 settlement provider under the policy and how funds will be  
57 9 escrowed with an independent third party during the transfer  
57 10 process); and the viatical settlement broker's business  
57 11 relationship with the parties (e.g., the receipt of competing  
57 12 offers and how the broker is to be compensated). A viatical  
57 13 settlement provider who transfers ownership or changes the  
57 14 policy's beneficiary must notify the viator of the change.

57 15 CODE SECTION 508E.9 == DISCLOSURE TO INSURER. The bill  
57 16 requires that a viatical settlement broker or viatical  
57 17 settlement provider disclose information regarding business  
57 18 transactions to the insurer.

57 19 CODE SECTION 508E.10 == GENERAL RULES. The bill provides a  
57 20 number of general requirements imposed upon the parties.

57 21 Prior to entering into a viatical settlement contract, a  
57 22 viatical settlement provider must obtain a medical statement  
57 23 attesting to the viator's sound mental condition and a release  
57 24 of the viator's medical records. The viatical settlement  
57 25 provider must notify the insurer that the insurance policy has  
57 26 or will become a viaticated policy and include a copy of the  
57 27 medical release.

57 28 The insurer must verify the policy's coverage to the  
57 29 viatical settlement provider or viatical settlement broker as  
57 30 requested.

57 31 The viatical settlement provider must obtain a witnessed  
57 32 document affirming that the viator knowingly consented to the  
57 33 viatical settlement contract.

57 34 The viator's medical information is confidential.

57 35 A viator has an absolute right to rescind a viatical  
58 1 settlement contract within a time certain, subject to giving  
58 2 notice of the rescission to a viatical settlement provider and

58 3 repaying the viatical settlement provider proceeds associated  
58 4 with the transfer (e.g., the settlement and premiums, loans,  
58 5 and loan interest paid by or on behalf of the viatical  
58 6 settlement provider).

58 7 The documents and moneys required to effect the change in  
58 8 the policy and consideration for the change must be delivered  
58 9 to the parties through an independent escrow agent.

58 10 The failure by a viatical settlement provider to provide a  
58 11 viator timely payment allows the viator to void the viatical  
58 12 settlement contract.

58 13 Limitations are placed on the right of a viatical  
58 14 settlement provider or viatical settlement broker to contact  
58 15 an insured for purposes of determining the insured's health  
58 16 status.

58 17 CODE SECTION 508E.11 == PROHIBITED PRACTICES. The bill  
58 18 prohibits a person from entering into a viatical settlement  
58 19 contract prior to applying for a policy or within five years  
58 20 of the date of insurance, unless a condition is satisfied  
58 21 (e.g., the policy was issued upon the viator's conversion  
58 22 rights) or some extraordinary occurrence is independently  
58 23 established (e.g., the viator becomes terminally or  
58 24 chronically ill, physically or mentally disabled, or  
58 25 financially distressed).

58 26 The insurer must respond to a demand effecting change of a  
58 27 policy's ownership or beneficiary within a time certain.

58 28 CODE SECTION 508E.12 == PROHIBITED PRACTICES AND CONFLICTS  
58 29 OF INTEREST. The bill prohibits a viatical settlement broker  
58 30 or viatical settlement provider from having a conflict of  
58 31 interest in connection with a viatical settlement (e.g.,  
58 32 certain payments between viatical settlement providers and  
58 33 viatical settlement brokers). The bill restricts advertising.  
58 34 Advertising materials must be filed with the commissioner and  
58 35 no suggestion can be made that a settlement is provided free  
59 1 to the viator.

59 2 CODE SECTION 508E.13 == ADVERTISING FOR VIATICAL  
59 3 SETTLEMENTS. The bill requires a viatical settlement provider  
59 4 or viatical settlement broker to establish and maintain a  
59 5 system of control over the dissemination of advertisements.  
59 6 It requires that advertisements be truthful and that  
59 7 information not be presented to a prospective viator in a  
59 8 misleading manner (e.g., minimized, obscured, or ambiguous).  
59 9 It restricts the use of testimonials, appraisals, or  
59 10 endorsements; restricts the use of names and symbols (e.g., a  
59 11 trade name, service mark, slogan, or symbol) in a misleading  
59 12 manner; or prohibits an impression that a governmental entity  
59 13 approves a viatical settlement broker or viatical settlement  
59 14 provider or a transaction.

59 15 CODE SECTION 508E.14 == FRAUD PREVENTION AND CONTROL. The  
59 16 bill provides for a number of measures to prevent and control  
59 17 fraud.

59 18 A number of acts involving fraud or interference with an  
59 19 investigation is prohibited. A person convicted of a felony  
59 20 cannot participate in the business of viatical settlements. A  
59 21 viatical settlement contract must contain a fraud warning. A  
59 22 person engaged in the business of viatical settlements must  
59 23 report violations of the bill to the commissioner.

59 24 A person who furnishes information regarding fraud to the  
59 25 commissioner or other law enforcement agency enjoys immunity  
59 26 from liability (unless the information is furnished with  
59 27 actual malice); the person may be entitled to an award of  
59 28 attorney fees and court costs if the person prevails in a  
59 29 cause or action relating to libel or slander.

59 30 Information obtained by the commissioner in an  
59 31 investigation is confidential with certain exceptions (e.g.,  
59 32 information released as part of an administrative or judicial  
59 33 proceeding or to a law enforcement or regulatory agency).

59 34 A viatical settlement provider or viatical settlement  
59 35 broker must implement antifraud initiatives to detect,  
60 1 prosecute, and prevent fraudulent viatical settlement acts,  
60 2 and submit related antifraud plans to the commissioner.

60 3 CODE SECTION 508E.15 == INJUNCTIONS == CIVIL REMEDIES ==  
60 4 CEASE AND DESIST ORDERS == CRIMINAL PENALTIES. The bill  
60 5 authorizes the commissioner to seek injunctive relief in order  
60 6 to restrain a person from violating the bill's provisions.

60 7 A person damaged by a violation may bring a civil action  
60 8 against the person committing the violation. The commissioner  
60 9 may issue an emergency order to require a person to  
60 10 immediately cease and desist from a violation.

60 11 A person who violates a provision of the bill is subject to  
60 12 a civil penalty.

60 13 CODE SECTION 508E.16 == UNFAIR TRADE PRACTICE. The bill

60 14 provides that a violation of the bill's provisions is  
60 15 considered a violation of Code chapter 507B, governing  
60 16 insurance trade practices.  
60 17 CODE SECTION 508E.17 == AUTHORITY TO PROMULGATE RULES. The  
60 18 bill authorizes the commissioner to adopt rules necessary to  
60 19 implement and administer the Code chapter. As part of this  
60 20 authority, the commissioner is responsible for establishing a  
60 21 standard for payments under viatical settlement contracts,  
60 22 establishing licensing requirements and fees, establishing  
60 23 standards for evidence of financial responsibility, and  
60 24 governing the responsibilities of insurers, viatical  
60 25 settlement providers, and viatical settlement brokers.  
60 26 UNCODIFIED PROVISIONS. The bill provides directions to the  
60 27 Code editor necessary to renumber sections in conformity with  
60 28 the model Act.  
60 29 LSB 5446XD 82  
60 30 da/rj/5